



Research SPOTLIGHT

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Invisible Government: Special Purpose Districts in Texas

The United States Constitution was adopted based on the principle of federalism, which holds that the federal government's powers are limited to those specifically enumerated in the United States Constitution, while all other powers remain with the states or the people, unless otherwise expressly restricted. The powers expressly granted to the federal government in the United States Constitution include the authority to levy taxes, declare war, and regulate commerce. Over time those powers were expanded by the courts, under the "necessary and proper" clause, to include implied powers. It was still understood that certain powers relating to moral, health and safety, and property issues remained with the states based upon the idea that states could more easily regulate and control such issues.

One of the powers remaining with the states was the power to create and develop local governments, as recognized in most state constitutions. Local governments include all units of government below the state level, including counties, municipalities, and special purpose districts. Local governments were developed within the states to encourage education and political participation on a smaller scale and to provide certain basic services according to local needs.

John Forrest Dillon, an American jurist who authored a treatise in 1872 on the power of states over municipal and local governments, entitled *Municipal Corporations*, established a principle that has been cited in numerous United States court decisions in determining the scope of powers and rights of municipalities and local governments. The so-called "Dillon Rule" states that municipal and local

governments only have the powers that are expressly granted to them by the state legislature, those that are implied from that grant of power, and those that are essential and indispensable to the municipality's existence and function. This rule narrowly construes the power of municipal and local governments.

Early in their establishment, towns and municipalities were the primary forms of local governments, addressing education and transportation issues in the development of schools and roads. In Texas, a municipality was incorporated by special order of the Congress of the Republic of Texas or later the state legislature. The Texas Constitution provides for two types of cities: general law and home rule. Cities with a population of less than 5,000 are designated as general law cities and are limited in their powers to organize their structure, set taxes, and annex territory. Home-rule cities, on the other hand, are cities with a population greater than 5,000 that have adopted home-rule charters approved by the citizens of the city at an election. Generally, home-rule cities are authorized to take any actions necessary to effectuate their governance

Special Purpose Districts

Education	3
Water and Waste Management	9
Economic and Community Development ..	28
Health and Safety	35
Agricultural Development	38
Transportation	41
Conclusion	43

and structure, as long as those powers are not specifically restricted in the state constitution or state statutes.

As municipalities began to expand into rural areas, counties were recognized to serve primarily as administrative subdivisions of the state and to provide governmental services in rural areas that municipalities could not properly address. All counties function under the same constitutional restrictions and basic organizational structure despite the wide variations in population, size, local characteristics, and public needs. Counties are political subdivisions of the state, and while they have autonomy and independence, counties remain subject to the actions of the state legislature. Counties were granted home-rule authority by the Texas Legislature in 1933; however, no county ever initiated a home-rule charter, and the law was repealed in 1969.

The most basic level of local government is the special purpose district. These districts are areas of the state, county, municipality, or other political subdivision that have been divided for judicial, political, electoral, or administrative purposes. Special purpose districts were originally created due to urban sprawl and the desire of suburban residents to create entities that could provide their own infrastructure and levy taxes for limited purposes, such as firefighting, road construction, and water and sewage treatment. These districts are given significant powers, including the power to acquire, purchase, sell, or lease real or personal property; sue and be sued; impose and collect taxes; issue bonds; borrow money; and contract with other entities. Some districts are granted the power of eminent domain.

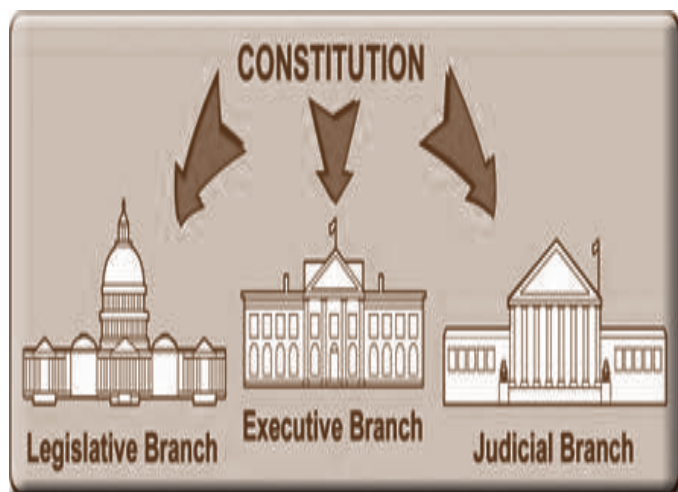
Generally, special purpose districts are governed by the commissioners court of the county in which they are created or by a board of directors that is either appointed by the governing body creating the district or elected at large. The board of directors has the authority to employ necessary officers, agents, and employees.

The most common form of special purpose district is the independent school district. Other prevalent forms of special purpose districts are water and wastewater districts and improvement and economic development districts.

Section 52, Article III, Texas Constitution, authorizes the creation of certain special districts for limited purposes. The constitution authorizes districts to issue bonds and levy taxes to pay off the principal and interest on the bonds, with other powers and duties detailed through various statutes. Bonds must be approved by a vote of a two-thirds majority of the popular vote, and the amount of issued bonds or credit may not exceed one-fourth of the assessed valuation of the real property of the district or territory. The legislature may authorize the levy and collection of taxes for, among other things, the improvement of rivers, creeks, and streams; the construction and maintenance of pools, lakes, reservoirs, dams, canals, and waterways; and the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes.

Section 59, Article XVI, Texas Constitution, authorizes the legislature to pass any laws deemed appropriate for the conservation and development of all of the natural resources of the state and for the development of parks and recreational facilities. This section authorizes the creation of conservation and reclamation districts and grants the legislature the ability to authorize such indebtedness as may be necessary to provide all improvements and maintenance, including the issuance of bonds and levying of taxes. However, the legislature may not authorize the issuance of bonds or provide for any indebtedness against any reclamation district unless such a proposition is submitted to the voters and the proposition is adopted.

Other provisions in the Texas Constitution also provide for the creation of special purpose districts, such as Sections 5, 7 through 9B, and 13, Article IX, which authorize the creation of and address hospital districts. Sections 48-e and 48-f, Article III, Texas Constitution,



authorize the creation of emergency services districts and jail districts, respectively.

Generally, school districts, hospital districts, and water districts, as well as cities and counties, share in the allocation of property taxes. In 2007, about 60 percent of property taxes supported local elementary and secondary schools. The state sales tax of 6.25 percent accounts for the majority of the sales taxes collected in Texas. Cities, counties, transit authorities, and other local taxing units, such as municipal development districts and emergency services districts, are authorized to levy sales taxes of up to two percent, up to a total maximum sales tax of 8.25 percent.

While the Texas Constitution authorizes the creation of special purpose districts, various statutes set forth the procedures for their creation, as well as the governance, structure, and powers of the districts. Certain statutes set forth the provisions relating generally to special purpose districts, while other statutes explicitly create and govern particular, individual districts. The Special District Local Laws Code was created through H.B. 3508, 78th Legislature, Regular Session, 2003, and is an ongoing project of the Texas Legislative Council. The purpose of this code is to publish and revise local laws that govern individual special districts, the majority of which are published only as legislative session laws, and to make these local laws more accessible by placing them in the state statutes.

Currently, the Special District Local Laws Code is comprised of six titles, arranged by subject area (General Provisions; Environment and Sanitation; Health, Development and Improvement; Transportation; and Water and Wastewater); subtitles arranged by the general types of special districts; and chapters that pertain to each individual district. The code is designed to allow the addition of new and revised local laws as they become available for codification.

This publication is intended to provide some background and historical information regarding special purpose districts in Texas and current statutes prescribing their purposes; creation, governance and structure; and powers and duties. It does not constitute an exhaustive analysis of all the statutory provisions relating to special purpose districts, but will highlight the most salient details of those provisions.

Special Purpose Districts

EDUCATION

Chapter 13 (Creation, Consolidation, and Abolition of a District) of the Texas Education Code establishes the various ways an independent school district (ISD) is created, including by petition, detachment, annexation, or consolidation. A description of each method of creation is provided below, as well as the governance and structure of ISDs, as set forth in Chapter 11 (School Districts), Texas Education Code. Also provided is a brief explanation of how school districts are funded and a description of the various types of school districts, including charter schools, community college districts, and special-purpose school districts, also prescribed by the Education Code.

INDEPENDENT SCHOOL DISTRICTS

► Creation

Initially, a school district may be created by submitting a petition, signed by at least 10 percent of the registered voters within the proposed district, to the county judge. The county judge then orders an election for the approval of the district after proper notice.

Another manner in which a school district may be created is by detaching territory from an existing school district and annexing it to a school district that is contiguous to the detached territory. Section 13.051(f) prohibits a school district from being reduced to an area of less than nine square miles. To implement the annexation, a petition, signed by a majority of the registered voters residing in, or the surface owners of, the territory to be detached and annexed, requesting the detachment and annexation is required to be presented to the board of each district affected. The boards of the affected districts must hold a hearing, either jointly or separately, to consider and make findings as to the educational interests of current and future students in the affected territory and the social, economic, and educational effects of the proposed boundary change.

Upon approval of the petition based on the findings, the boards of trustees must adopt a resolution and submit the resolution and findings to the commissioners court of any county in which the affected territory is located. The commissioners court(s) must then enter an order redefining the boundaries of the district affected by the transfer. The Education Code sets forth certain limitations regarding boundaries of the districts and provides an appellate process if the boards of trustees do not approve the petition.

Creation of a new district by detachment alone is initiated by a resolution of the board of trustees of the existing district or by a petition submitted to the commissioners court, signed by at least 10 percent of the registered voters residing in the proposed area to be detached. The Education Code prohibits a new district from being created with an area of less than nine square miles or fewer than 8,000 students in average daily attendance. The commissioners court is required to hold a hearing to determine whether the petition is valid. Upon approval by the commissioners court, the board of trustees is required to conduct an election, creating the new school district only if the proposition receives a majority of the votes in the territory to be detached or a majority of the votes in the remaining territory in each district from which property is to be detached. The commissioners court is required to make an order creating the district, in which they appoint a board of seven trustees to serve until the next regular election.

Two or more school districts may be consolidated into a single school district upon adoption of a resolution by the boards of trustees or by a petition signed by a certain number of registered voters. Upon an election,

if a majority of the voters in each district favor the consolidation, the school district shall be declared consolidated by the boards of trustees. However, before an election may be held, an agreement drafted by the boards of trustee setting out the composition and method of election of the consolidated board of trustees, among other provisions, must be submitted to the registered voters of each district and be made available for public inspection prior to a public hearing on the matter. After a public hearing, the agreement may be amended and the election may be held.

► Governance

Chapter 11 of the Education Code sets forth the provisions regarding the governance of ISDs.¹ ISDs are governed by a board of three, five, or seven member trustees who are elected to serve three-year or four-year terms. Sections 11.052 through 11.058 of the Education Code set forth provisions relating to the process and results of electing trustees, including whether trustees are elected from single-member districts or the district at large.

The board of trustees has the exclusive power and duty to govern and oversee the management of the ISD and is authorized to acquire and hold personal property, sue or be sued, and receive bequests and donations or other money. Generally, the board of trustees is responsible for all the powers associated with ISDs except those given specifically to the Texas Education Agency (TEA) or the State Board of Education (SBOE). The board is authorized to adopt rules and bylaws necessary to carry out the powers and duties of ISDs, including adoption of an annual budget and tax rate each fiscal year. The board may issue bonds



¹ Prior to the rewrite of the Education Code in 1995, the following chapters outlined the statutes governing the different types of school districts.

- Chapter 17 County Administration
- Chapter 22 Common School districts
- Chapter 23 Independent School districts
- Chapter 24 Municipal School districts
- Chapter 25 Rural High School Districts
- Chapter 26 Rehabilitation Districts for Handicapped Persons
- Chapter 27 County Industrial Training School Districts
- Chapter 28 Countywide Vocational School District and Tax

After the rewrite of the Education Code in 1995, Section 11.301 (Application of Former Law), stipulates that school districts operating under the above chapters can continue to exist and operate under those chapters.

and levy, pledge, assess, and collect an annual ad valorem tax to pay the principal and interest on the bonds for the maintenance and operation of the district. The board is authorized to sell minerals in land belonging to the ISD. The board is authorized to donate land to a municipality, county, state agency, or nonprofit organization under certain circumstances. An ISD is authorized, by the exercise of the right of eminent domain, to acquire the fee simple title to real property for the purpose of securing sites on which to construct school buildings or for any other purpose necessary for the district.



► Funding

School districts rely on property taxes as their local funding source, but due to the varying property values across the state, the amount of money each school district receives from property taxes varies.

The state offsets this variation by providing different amounts of aid to different school districts. Schools with lower property wealth per student receive more state funding than do schools with higher property wealth per student. This is an effort by the state to equalize resources provided to school districts.

Chapter 41 (Equalized Wealth Level), Education Code, requires school districts to use a specific formula to optimize wealth equalization, which may lead to the reallocation of property tax revenues from higher property wealth districts to lower property wealth districts.

The Foundation School Program (FSP) represents the system of formulas for determining state and local funding of Texas schools. TEA uses FSP formulas to calculate the allotment for each of the 1,031 school districts that levy property taxes.

CHARTER SCHOOLS

Charter schools were established under the revision of the Education Code in 1995. S.B. 7, 73rd Legislature, Regular Session, 1993, required the commissioner of education to form a Joint Select Committee to Review the Central Education Agency (committee). The committee provided recommendations to the legislature, one of those

being a recommendation to authorize the establishment of charter schools. In 1991, TEA established the Partnership School Initiative, which allowed schools, upon approval, to attempt to improve education by freeing the schools from certain regulations and by providing students with an alternative to the standard public education system. Charter schools are regulated by fewer state laws than ISDs but are monitored and accredited under the statewide testing and accountability system.

The purposes of charter schools are to: (1) improve student learning; (2) increase the choice of learning opportunities within the public school system; (3) create professional opportunities that will attract new teachers to the public school system; (4) establish a new form of accountability for public schools; and (5) encourage different and innovative learning methods.

Generally, charter schools are funded by the FSP based on the number and type of students in attendance. The formula for calculating the amount of funding is called the State Average Formula. However, schools in operation prior to September 1, 2001, use a specific formula called the Resident District Dependent Formula. Charter schools have no local taxing authority and may not issue bonds, except for home-rule school district charters. Approximately 82 percent of the funding for charter schools comes from the state, 14.5 percent comes from federal funding, often in the form of grants, and the remainder from donations.

There are four types of charters that may be established: home-rule school district charters; campus or campus program charters; open-enrollment charters; and

college or university charters. Home-rule school district charters are adopted by ISDs seeking to change all of their schools into charter schools. A campus program charter school was once a school in an ISD that decided to transition that particular school into a charter school. Open-enrollment charter schools are nonprofit organizations whose charters are granted by SBOE, and they comprise most of the charter schools in Texas. College or university charter schools are developed by higher education institutions, and currently, two charters have been awarded to a senior university. There are currently no schools operating under home-rule school district charters.



According to “Texas Charter School Statistics, January, 2008,” by the Resource Center for Charter Schools, there are 197 open-enrollment charters with 374 open-enrollment charter school sites, two university charters, and 59 campus or campus program charters. The same report shows that total enrollment in charter schools in Texas in 2007 was 100,839 students in 256 charters, with 4,919 teachers employed by charter schools. There are currently no schools operating under home-rule school district charters.

► Home-Rule School District Charters

A school district is authorized to adopt a home-rule school district charter under which the district will operate. A home-rule school district has the powers and entitlements granted to school districts and school district boards, including taxing authority.

The board of trustees of a school district is required to appoint a 15-member charter commission to frame a home-rule school district charter if the board receives a petition containing signatures of at least five percent of the registered voters of the district or if at least two-thirds of the board votes to adopt a resolution ordering that a charter commission be appointed. The charter developed by the commission is required to address certain issues, including the educational programs that are offered, the governing structure, the performance levels, and the budgetary process.

The Education Code requires the charter commission to submit the proposed charter to the secretary of state. If the secretary of state determines that the proposed charter

changes the governing structure of the school district, the board is required to submit the proposed change to the United States Department of Justice or the United States District Court for the District of Columbia for preclearance under the Voting Rights Act. The charter must also be submitted to the commissioner of education for review to ensure compliance with the law and to provide recommendations for modifications.

The board of trustees is required to order an election on the proposed charter as soon as practicable after approval by the commissioner of education. The charter is adopted when approved by a majority of the qualified voters of the district in an election, so long as at least 25 percent of the voters in the district participated.

► Campus or Campus Program Charters

A board of trustees of a school district or the governing body of a home-rule school district is authorized by statute to grant a charter for a campus or a program on campus to parents and teachers if requested by a petition signed by either a majority of the parents of the students at that school campus or a majority of the teachers at that school campus. A student’s parent or guardian has the right to choose whether the child is enrolled in a campus or campus program charter. The Education Code prohibits a school from assigning a student to a campus or campus program charter or from assigning a teacher to a campus program charter if the teacher has signed a written statement that the teacher does not agree to the assignment. The campus or campus program charter has the powers granted to school districts.

► Open-Enrollment Charters

Upon application, SBOE may grant an open-enrollment charter to an eligible entity, including an institution of higher education, a nonprofit organization, or a governmental entity. A majority of the open-enrollment charters have been granted to nonprofits, while several have been granted to universities and governmental entities. The law provides a cap of 215 open-enrollment charters that may be granted by SBOE. While the law does not provide a specific term limit for an open-enrollment charter, the practice of SBOE is to grant a charter for five years and then renew for three-year or five-year terms. Open-enrollment charter schools are granted similar powers and are subject to many of the same regulations as ISDs.

► College or University Charters

Subchapter E (College or University Charter School), Chapter 12 (Charters), Education Code, authorizes SBOE to grant open-enrollment charters to public senior colleges or universities upon application; however, the statute provides that the cap on the number of open-enrollment charters does not apply to those granted to public senior colleges or universities.

SPECIAL-PURPOSE SCHOOL DISTRICTS

Section 11.352, Education Code, sets forth provisions relating to special-purpose school districts (SPSDs). SPSPDs may be created by SBOE, upon approval by the majority of the ISDs surrounding the proposed SPSPD, for the education of students in special situations whose educational needs are not adequately met by regular school districts. SPSPDs are governed by an appointed board of trustees.

Military reservation school districts are specifically included in the statutes relating to SPSPDs. Military reservation schools are for children of military members and civilian employees residing in or employed on a military reservation.

There are six SPSPDs: Lackland ISD, Randolph Field ISD, Fort Sam Houston ISD, Boys Ranch ISD, The

University of Texas High School Program, and the Texas Tech University High School Program.

Lackland ISD, Randolph Field ISD, and Fort Sam Houston ISD are located on military bases and operate in a manner similar to a traditional ISD. The military reservation school districts receive state aid, based on a student attendance formula and federal impact aid in lieu of tax funding because none of the land within the district is taxable.

The University of Texas High School Program and the Texas Tech University High School Program operate through correspondence and online educational instruction. These programs receive funding through tuition and fees.

The Boys Ranch ISD, while similar in most respects to a traditional ISD, provides educational instruction to residents of Cal Farley's Boys Ranch and Cal Farley's Girlstown, U.S.A., residential programs for at-risk youth. Boys Ranch ISD is funded through contributions made to Cal Farley's organization, which includes the Cal Farley's Boys Ranch and the Cal Farley's Boys Ranch Foundation, and state and federal funds as provided to any ISD in Texas.

JUNIOR/COMMUNITY COLLEGE DISTRICTS

Currently, Texas has 50 locally governed public community or junior college districts. Some of the first community colleges were church-affiliated institutions that were later converted into public institutions. Others were extensions of school districts that were authorized



in 1929 to separate from the school districts to become independent institutions. The earliest community college districts were Blinn College, established in 1883, and Clarendon College and Saint Phillips College, both established in 1898.

Texas public junior colleges and community college districts (Note: Section 130.005, Education Code, recognizes that junior colleges are in fact comprehensive community colleges, effectively making those terms interchangeable) are two-year institutions that serve local taxing districts and service areas in Texas and offer vocational, technical, and academic courses for certification or associate degrees. They also offer continuing, remedial, and compensatory education consistent with open-admission policies, as well as counseling and guidance programs. These institutions also conduct research that is funded through private and competitively acquired sources, local taxes, and other local revenue.

Section 61.062, Education Code, authorizes the Texas Higher Education Coordinating Board (THECB) to adopt standards and policies relating to the creation, dissolution, and operation of community college districts. Section 61.063, Education Code, requires the commissioner of higher education to certify colleges that have complied with the prescribed standards, rules, and regulations. Only those colleges that have been certified are eligible to receive funds from the legislature. Below are the types of junior/community college districts that may be established under Section 130.004, Education Code:

- an independent school district junior college;
- a city junior college;
- a union junior college;
- a county junior college;
- a joint-county junior college; and
- a public junior college as a part or division of a regional college district.

► Creation

Sections 8.21 through 8.36, Title 19 (Education), Texas Administrative Code, set forth the requirements for the creation of a public community college district. That code provides that if a local group of citizens is interested in establishing a community college district,

the group must appoint a steering committee of at least seven citizens to provide leadership on behalf of the proposed community college. If a proposed community college district is to be coextensive with an ISD, the board of trustees of that ISD may serve as the steering committee.

The steering committee must prepare and circulate a petition requesting an election on the establishment of a community college district. The petition must be signed by not less than 10 percent of the qualified voters in the proposed district and verified by the appropriate authorities. The steering committee is then required to file a letter of intent with the commissioner of higher education within a designated period before THECB holds its quarterly meeting, at which the steering committee submits the certified petition requesting approval to hold an election regarding the creation of a public community college district. THECB must approve and authorize an election in which the district must be approved by a majority of those voting.

► Governance

Section 51.352, Education Code, sets forth the duties and responsibilities of the governing boards of institutions of higher education, including community colleges. Community college districts are governed by a board composed of seven to nine lay members. The board is authorized to set and collect any amount of tuition, rentals, rates, charges, or fees the board considers necessary for the efficient operation of the college district, with certain exceptions. The board is required to provide policy direction for the college district and adopt such rules, regulations, and bylaws as the board deems advisable.

► Community College Funding

The legislature appropriates state funds based on the community and technical college funding formula. Community college governing boards raise local funds through tuition and fees and property taxes to defray the expenses associated with construction and maintenance.

Special Purpose Districts

WATER AND WASTE MANAGEMENT

For over 50 years, lawmakers have been taking actions necessary to ensure that Texas' water supplies are both dependable and adequate. Over time the focus on addressing water issues has evolved from control and management to conservation and reuse. The Texas Water Development Board, in conjunction with the Texas Commission on Environmental Quality (TCEQ) and the Texas Parks and Wildlife Department as well as groups and individuals with various social, environmental, and economic interests, plans and manages the water of Texas.

PROVISIONS APPLICABLE TO WATER AND WASTE SERVICES

► Water District and River Authority Parks

Under Chapter 25 (Water District and River Authority Parks), Parks and Wildlife Code, districts and authorities created under Section 59, Article XVI, Texas Constitution, are directed to conserve and develop water resources for public recreation purposes and, if deemed necessary or desirable by the governing body of the district for public recreation purposes, to acquire and improve for park purposes any lands adjacent to or in the vicinity of any public water or any other impounded water available to the public. The statute authorizes the establishment of reasonable rules and fees by districts to facilitate the operation of water-related park areas. However, districts may not levy any fees or charges for boat inspection, fishing, or other activity on the water of the state and may not exercise the power of eminent domain. Chapter 25 also authorizes districts that operate water-related park areas to enter into leases, concessions, franchises, and other relevant agreements.

► Competition for Municipally Owned Utilities and River Authorities

Chapter 40 (Competition for Municipally Owned

Utilities and River Authorities), Utilities Code, grants authority and establishes provisions related to the issuance of charges, bonds, notes, or other obligations by municipalities and river authorities in connection with securitization financing.

► Solid Waste Services

Chapter 361 (Solid Waste Disposal Act), Health and Safety Code, addresses the storage, processing, and disposal of hazardous waste at permitted hazardous industrial solid waste facilities. Under the chapter, political subdivisions of the state that have the power to regulate solid waste handling or disposal practices or activities in their jurisdiction and that have jurisdiction of territory in more than one county may by resolution assume the exclusive authority to exercise, in the area subject to their jurisdiction, the powers granted by Chapter 361 to a county, to the exclusion of the same powers by the counties otherwise having jurisdiction over the area.

Section 361.271(g) also stipulates that a port authority or navigation district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, is not responsible under the chapter for the release or threatened release of hazardous waste from a facility or at a site solely for certain activities related to construction or maintenance of waterways to facilitate navigation. However, this provision does not relieve a port authority or navigation district of liability if the entity causes or contributes to the generation of hazardous waste.



According to Chapter 362 (Solid Waste Resource Recovery Financing Act), Health and Safety Code, it is the policy of the state to safeguard the public health, the general welfare, and physical property from solid waste pollution by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

Chapter 362 grants “issuers” – constitutionally created districts or authorities that are authorized by law to own a waste disposal system and that include within their boundaries all of at least one county – the authority to issue bonds, payable from revenues of the issuer, to finance or refinance the cost of acquiring, constructing, or improving a disposal system. The statute sets forth the terms and procedures under which these bonds may be issued.

Chapter 362 authorizes issuers to acquire and transfer real property and disposal systems and sets forth the terms and procedures for contracts that issuers and public agencies may enter into. The statute authorizes certain types of tax and non-tax revenue sources that public agencies may use for payment of contracts, including the levying of fees and charges on those who benefit from services provided in connection with the contract. Public agencies with taxing power are authorized to hold an election to determine whether a contract may be secured by that taxing power to an extent not already permitted under the statute.

Chapter 362 authorizes certain public agencies under contract to sponsor the creation of an industrial development corporation pursuant to the Development Corporation Act of 1979. Such a corporation is authorized to issue indebtedness to finance the cost of a solid waste system under contract.

According to Chapter 363 (Municipal Solid Waste), Health and Safety Code, it is the policy of the state to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation

and the proper management of solid waste, including disposal and processing to extract usable materials or energy.

Chapter 363 authorizes TCEQ to accept and disburse federal funds received for purposes relating to solid waste management and resource recovery and allows the use of state funds together with local or regional funds to match federal funds on TCEQ-approved programs for municipal solid waste management. The statute also establishes policies and procedures for the adoption of regional and local solid waste management plans.



Public agencies, including constitutionally created districts or authorities, municipalities, counties, or a combination thereof acting under an interlocal agreement and having the authority to own and operate a solid waste management system, are authorized under Chapter 363 to offer a resource recovery service and to charge fees for that service. Resource recovery systems acquired by public agencies in order to reduce municipal solid waste by mechanical means or incineration are exempt from property taxes. The governing body of such a public agency is also granted rulemaking authority in connection with its duties related to solid waste services.

Chapter 363 authorizes public agencies to enter into contracts to enable them to furnish or receive solid waste management services on terms considered appropriate by the public agency’s governing body.

Chapter 363 sets forth the methods through which a public agency may pay for solid waste management, including the establishment of a fund; the use of available revenues or resources, including tax revenues from public agencies that have taxing power; and the establishment of fees, rates, charges, rentals, and other amounts for services or facilities provided under or in connection with a contract. Public agencies are authorized to issue bonds to acquire, construct, improve, enlarge, and repair solid waste management systems. The statute sets forth the policies and procedures for the issuance of these bonds.

Chapter 364 (County Solid Waste), Health and Safety Code, authorizes a cooperative effort by counties; public agencies, including a district or authority created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution; and other persons for the safe and economical collection, transportation, and disposal of solid waste to control pollution in the state. Under the statute, public agencies are authorized to contract with other public agencies or certain private contractors in order to make all or part of a solid waste disposal system available to a public agency, a group of public agencies, or other persons and to furnish solid waste collection, transportation, handling, storage, or disposal services through the other public agency's or private contractor's system.

Chapter 364 authorizes a public agency or county to offer solid waste disposal services to persons in its territory, require the use of those services, charge fees for the services, and establish the service as a utility separate from other utilities in its territory.

The purpose of Chapter 366 (On-Site Sewage Disposal Systems), Health and Safety Code, is to regulate and plan on-site sewage disposal systems and authorize fees and penalties related to the operation of those systems. Under the statute, TCEQ or agents authorized by TCEQ, including river authorities or special districts, have authority over on-site sewage disposal systems and are directed to administer the provisions of Chapter 366. The statute establishes rules for effective and efficient administration of on-site sewage disposal systems and authorizes TCEQ or authorized agents to issue emergency orders concerning such systems. TCEQ or authorized agents are authorized to require a property owner to repair a malfunctioning on-site sewage disposal system on the owner's property.

Chapter 366 establishes the procedure under which TCEQ may designate a local governmental entity as an authorized agent, the responsibilities that TCEQ must delegate to the agent, and requirements regarding the investigation of authorized agents by TCEQ. The statute also requires local governmental entities that intend to apply to the Texas Water Development Board for financial assistance under a program for economically distressed areas to take all actions necessary to receive and maintain a designation as an authorized agent of TCEQ.

► **Municipal Water Services**²

Chapter 401 (Water Control by Municipalities), Local Government Code, contains provisions related to certain governmental entities, including levee districts, water control and improvement districts, water improvement districts, and navigation districts, that are concerned with the control of harmful excess of water.

Under Chapter 401, a municipality may contract with a water control body to perform, jointly with a water control body or independently, an action related to the control of harmful excess of water. Water control bodies otherwise having appropriate powers may also contract with one another for such purposes. The statute establishes the manner in which water control bodies may contribute money to improvement projects.

Chapter 402 (Municipal Utilities), Local Government Code, contains provisions regarding municipal utility systems, including the authorization of a municipality, upon majority vote of its governing body, to enter into a contract with a water district or nonprofit corporation. Under such a contract, which must be authorized by a majority vote of the municipality's governing body, the district or corporation acquires for the benefit of, and conveys to, the municipality a water supply or treatment system, a water distribution system, a sanitary sewage collection or treatment system, or works or improvements necessary for drainage of land in the municipality. The district or corporation must also, in connection with the acquisition, improve, enlarge, or extend the existing municipal facilities as provided by the contract.

² Due to changes made by H.B. 2278, 80th Legislature, Regular Session, the following chapters of the Local Government Code related to the provision of water and sewage services by districts will be renumbered effective April 1, 2009.

Current	Renumbered
401	551
402	552
411	561
412	562
413	563
422	572
423	573
430	580

Under the statute, municipalities may also, upon approval of a majority of qualified voters, contract with a water improvement district or water control and improvement district for the supplying of water to the municipality. A contracting district is authorized to issue warrants, notes, or bonds to acquire facilities for supplying the water.

Chapter 402 also establishes provisions for contracts between municipalities and special districts for water production and supply, the supply and purchase of hydroelectric power or energy, and the provision of sewage services.

► **County Water Services**

Chapter 411 (Water Control by Counties), Local Government Code, allows counties to acquire public or private real property, including acquisition through the use of eminent domain, for the purpose of building canals, drains, levees, and other improvements to provide for flood control and water outlets. The commissioners court of a county may contract with certain governmental entities, including a state soil conservation district, a conservation and reclamation district, a drainage district, a water control and improvement district, a navigation district, a flood control district, or a levee improvement district, for the purpose of carrying out plans and programs for flood control and soil conservation.

Chapter 412 (County Water Supply), Local Government Code, allows the commissioners court of a county to sell and deliver county surplus water to certain public entities, including a water control and improvement district and a fresh water supply district. The statute allows Matagorda County to enter into a management or lease agreement with another public or private entity for the operation of a county water or sewage system.

Chapter 412 allows the commissioners court of a county with a population of more than 1.3 million and in which a municipality with a population of more than one million is primarily located to contract with a constitutionally authorized district in order to provide and operate a water supply system or sewage system in areas of the county outside the limits of a municipality.

The commissioners court of a county may also contract with any political subdivision of the state to manage and operate property or an interest in property used for surface water purposes. Under Chapter 412, a county may also contract for the operation of a water or sewer utility system to serve an unincorporated area of the county in accordance with the same provisions established for municipalities under Chapter 402.

Chapter 413 (Water, Wastewater, or Solid Waste Systems in Counties with Population of 10,000 or Less), Local Government Code, applies to counties with a population of 10,000 or less that have established a county utility system board as allowed under this statute. Under Chapter 413, the board may not extend utility system service to a municipality or conservation and reclamation district without the consent of the governing body of those entities. The commissioners court of a county in which a conservation and reclamation district is located may, with the consent of the district's directors, assume the district's outstanding obligations and provide for its abolition.

► **Public Utility Agencies**

Chapter 422 (Public Utility Agencies for Provision of Water or Sewer Service), Local Government Code, allows two or more public entities, including constitutionally authorized districts or authorities, that have the authority to engage in certain water services to join together as cotenants or co-owners of facilities. Under the statute, two or more public entities that engage in water or sewage service and wish to build and maintain facilities may join to create a public utility agency, which is statutorily considered a separate agency,



a political subdivision of the state, and a political entity and corporate body.

Each participating public entity is granted certain rights, powers, and duties, including the ability to share in the facility, issue bonds and other securities, and acquire or transfer property. The statute also grants participating public entities the power of eminent domain and provides tax-exempt status to the jointly owned facility.

Public utility agencies are not granted taxation powers but have all other powers related to facilities and provided by law to a municipality that owns a facility. Public entities may create a public utility agency by concurrent ordinances, but a public entity may join in the agency's creation only if the entity has the authority to engage in the collection, transportation, treatment, or disposal of sewage or the conservation, storage, transportation, treatment, or distribution of water. The governing body of each public entity must also publish a notice of intent to create the agency. If, before the adoption of the concurrent ordinance, 10 percent of the registered voters of a public entity submit a petition for a referendum, an election must be held and the ordinance may not take effect without the approval of a majority of the votes cast.

Under Chapter 422, each public entity is entitled to make at least one appointment to the public utility agency's board of directors. Public utility agencies are authorized to enter into contracts, leases, or agreements, to accept grants and loans, to dispose of unnecessary property, and to adopt internal agency rules. Agencies may contract with the public entities that created the agency for water and sewage services and are authorized to charge rates sufficient to pay for agency operations. Agencies may establish a reasonable depreciation and emergency fund and issue obligations to carry out their functions. Under the statute, the state reserves the power to regulate and control the rates and charges of a public utility agency.

► **Stormwater Management**

Chapter 423 (Authority of Certain Counties and Districts to Regulate Stormwater Management), Local Government Code, applies to certain counties

and districts or authorities coterminous with those counties that are authorized to provide stormwater drainage and flood control facilities. The statute provides these entities with the authority to take actions to comply with the requirements of the stormwater permitting program under the federal National Pollutant Discharge Elimination System (NPDES), including the assessment of reasonable charges. However, these entities are prohibited from assessing a charge against property that is exempt from ad valorem taxation or subject to an assessment for the same purpose by another entity.

As authorized by the federal Clean Water Act, the NPDES permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States.

► **Miscellaneous Provisions Relating to Municipal and County Water**

Chapter 430 (Miscellaneous Provisions Relating to Municipal and County Water), Local Government Code, contains miscellaneous provisions relating to municipal and county water. Under one of the statute's provisions, most counties, municipalities, and utility districts are prohibited from collecting from a state agency or public institution of higher education any fee charged for the development or maintenance of programs or facilities for the control of excess water or stormwater.

► **Enforcement of Water Laws**

Chapter 7 (Enforcement), Water Code, contains provisions related to the enforcement of water laws contained in the Water Code and other relevant codes and establishes offenses for violations of environmental laws. Under Chapter 7, TCEQ is authorized to assess an administrative penalty against a person if the person violates a provision of the Water Code or of the Health and Safety Code that is within TCEQ's jurisdiction; a rule adopted or order issued by TCEQ under a statute within TCEQ's jurisdiction; or a permit issued by TCEQ under a statute within TCEQ's jurisdiction. For TCEQ to be authorized to assess this penalty, a county, political subdivision, or municipality must have

failed to institute a lawsuit or must not be diligently prosecuting a lawsuit against the same person for the same violation.

TCEQ is statutorily authorized to allow a municipally owned utility, a water supply or sewer service corporation, or a district to defer the payment of all or part of an administrative penalty for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violation. A district under this section is defined as any district or authority created under either Section 52, Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term does not include any navigation district or port authority created under general or special law or any conservation and reclamation district governed by Chapter 36 (Groundwater Conservation Districts), Water Code, unless a special law creating the district or amending the law creating the district states that Chapter 49 (Provisions Applicable to all Districts), Water Code, applies to the district.

► Water Rates and Services

Chapter 13 (Water Rates and Services), Water Code, establishes a comprehensive regulatory system for retail public utilities to assure rates, operations, and services that are just and reasonable to consumers and to retail public utilities.

Under Chapter 13, ratepayers of a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that provides water or sewer service to household users may appeal a decision of the governing body of the entity affecting their water, drainage, or sewer rates to TCEQ.

For rates charged by a municipality for water or sewer service to a district created pursuant to Section 59, Article XVI, Texas Constitution, and which is located within the corporate limits or the extraterritorial jurisdiction of the municipality, or to the residents of such district, in the event that the municipality requires the district to purchase water or sewer service from the municipality, Chapter 13 stipulates the right of the district to appeal the rates imposed by the municipality by filing a petition with TCEQ. In such an appeal, the municipality has the

burden of proof to establish that the rates are just and reasonable.

► Water Development

Chapter 16 (Provisions Generally Applicable to Water Development), Water Code, stipulates that groundwater districts are the state's preferred method of managing groundwater resources. The statute requires drainage districts and levee improvement districts, immediately before having their bonds approved by the attorney general, to file with TCEQ a complete report showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

Chapter 16 authorizes the Texas Water Development Board, in connection with an application filed pursuant to Subchapter K (Assistance to Economically Distressed Areas for Water Supply and Sewer Service Projects), Chapter 17 (Public Funding), Water Code, to consider and make any necessary investigations and inquiries as to the feasibility of creating a conservation and reclamation district under Section 59, Article XVI, Texas Constitution, to provide, in lieu of financial assistance, water supply and sewer services in the area covered by the application through issuance of district bonds.

Political subdivisions that receive financial assistance are authorized by Chapter 16 to charge persons in an economically distressed area in which water supply and sewer services are furnished an amount for those services that is not less than the amount provided in the application for financial assistance.

► Water Quality Control

Chapter 26 (Water Quality Control), Water Code, limits the liability of river authorities in the performance of governmental functions related to the control and elimination of noxious weeds, grasses, and vegetation in the rivers, tributaries, impoundments, and reservoirs of the state through the application of aquatic herbicides.



Chapter 26 authorizes local governments, including a river authority or a water district or authority acting under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, to inspect the public water in their area and determine whether the quality of the water meets state quality standards; whether persons discharging effluent into the public water have obtained permits for the discharge; and whether persons who have permits are making discharges in compliance with the requirements of the permits. Local governments are granted the same authority as TCEQ to enter public and private property within their territorial jurisdiction to make inspections and investigations of conditions relating to water quality.

The statute authorizes local governments to enter into cooperative agreements relating to water quality with TCEQ or other local governments. Chapter 26 directs local governments that own or operate a disposal system to enact and enforce rules, ordinances, orders, or resolutions to control and regulate waste that may be discharged to the disposal system and, where necessary, to require pretreatment of waste to be discharged to the system. Local governments are also authorized to establish charges and assessments to be collected from those who discharge waste to the disposal system.

► **Regional Waste Disposal**

Chapter 30 (Regional Waste Disposal), Water Code, authorizes public agencies to cooperate for the safe and economical collection, transportation, treatment, and disposal of waste in order to prevent and control pollution of water in the state.

Chapter 30 authorizes constitutionally created districts to acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more disposal systems. Districts may contract for the purchase, sale, or lease of waste collection, transportation, treatment, or disposal facilities or systems or make operating agreements in relation to such facilities or systems. Districts are authorized to enter an operating agreement or contract with any person to perform waste services for that person. River authorities are authorized to enter into certain contracts, with the exception of contracts to serve public agencies

of the facilities of a person located wholly inside the boundaries of another river authority, unless the consent of the other river authority has been provided. Public agencies are authorized to enter into a contract with a district under which the district provides a disposal system and waste disposal services.

Chapter 30 grants bonding authority, upon voter approval, to districts so that they may purchase capacity in, or purchase a right to have the wastes of the district treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency. Districts are authorized to acquire and use property inside or outside the district's boundaries and are granted the power of eminent domain to carry out the purposes of the statute. No election is required for the exercise of any power under Chapter 30 except for taxes levied by public agencies.

Chapter 30 authorizes districts to issue bonds in order to acquire, construct, improve, enlarge, extend, or repair disposal systems and authorizes them to assess rates and charges for services.

Chapter 30 also authorizes river authorities to prepare regional plans for water quality management and control and abatement of pollution in any segment of its river basin and adjoining coastal basins. Under the statute, river authorities may jointly plan and enter into planning agreements with any district or public agency on a basin-wide scale, including adjacent coastal basins. River authorities may also apply for and enter into contracts for financial assistance in comprehensive planning.

GROUNDWATER MANAGEMENT AND CONSERVATION

► **Underground Water Conservation Districts**

The regulation of groundwater was originally governed by Chapter 52 (Underground Water Conservation Districts), Water Code. However, H.B. 2294, 74th Legislature, Regular Session, separated Chapter 52 into two chapters under the Water Code in order to reduce confusion and facilitate more efficient operation of groundwater districts. H.B. 2294 repealed Chapter 52 and created Chapter 35 (Groundwater Studies), which

governs the duties of state agencies regarding designation of groundwater management areas and critical areas, and Chapter 36 (Groundwater Conservation Districts), which consolidates the provisions of the Water Code governing groundwater districts.³

► Groundwater Management Areas

Chapter 35 (Groundwater Studies), Water Code, authorizes the creation of groundwater management areas, consistent with the objectives of Section 59, Article XVI, Texas Constitution, in order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater and of groundwater reservoirs or their subdivisions and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions. The statute directs the Texas Water Development Board (TWDB), in cooperation with TCEQ, to designate groundwater management areas not later than September 1, 2003. TWDB is directed by the chapter to consider the boundaries of a subdivision of a groundwater reservoir or aquifer and the boundaries of political subdivisions or existing groundwater conservation districts in determining groundwater management areas. In December 2002, TWDB designated 16 groundwater management areas covering the entire state. Only one of these areas does not include any groundwater conservation districts.

Chapter 35 includes provisions to designate priority groundwater management areas and address those areas of the state that are experiencing or are expected to experience within 25 years critical groundwater problems. The statute establishes procedures through which TCEQ may designate priority groundwater

management areas and stipulates that the designation of such an area must recommend that the area be covered by a district that has the authority to regulate the spacing of water wells, the production from water wells, or both. This must be accomplished either through the creation of one or more new districts, the addition of the land in the groundwater management area to one or more existing districts, or a combination of these approaches. Landowners in a priority management area may create one or more districts or have the area annexed to a district that adjoins the area. If a recommendation to add a priority management area to an existing district is made and accepted by the board of the existing district, an election on the issue is held within the priority groundwater management area.

► Groundwater Conservation Districts

Chapter 36 (Groundwater Conservation Districts), Water Code, provides for the creation of groundwater conservation districts in order to address the conservation, preservation, protection, recharging, and prevention of waste of groundwater and of groundwater reservoirs or their subdivisions and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions.

According to Chapter 36, a groundwater conservation district may be created under and subject to Section 59, Article XVI, Texas Constitution. A district may include all or part of one or more counties, cities, districts, or other political subdivisions, but may not include territory located in more than one county except upon approval

³ Chapter 52, Water Code, still contains a provision, Section 52.005(c), that was not repealed by H.B. 2294, 74th Legislature, Regular Session, and which stipulates that Sections 49.052, 49.216, and 49.301 through 49.308, Water Code, do not apply to districts governed by Chapter 52. However, the provisions of Chapter 49 (Provisions Applicable to All Districts), Water Code, already do not apply to most districts governed by Chapter 36, Water Code, the statute created to replace Chapter 52. Therefore, in most cases, Section 52.005(c) has no substantive legal effect.

Chapter 49 does, however, apply to a district governed by Chapter 36 if a special law creating the district or amending the law that created the district stipulates that Chapter 49 applies. Therefore, there may be circumstances in which a groundwater conservation district, due to special or local laws, may be governed jointly by Chapters 36 and 49. Under such a circumstance, the exclusionary provision of Section 52.005(c) may apply. However, the attorney general has never expressed an opinion on this issue and it is uncertain whether Section 52.005(c) would indeed have any substantive effect in this event.





of the majority of voters residing within the territory in each county to be included in the district. The boundaries of the district must be coterminous with or inside the boundaries of a management area or a priority groundwater management area. A district may consist of separate bodies of land that are separated by land not included in the district, but a majority of the votes cast by voters in a segregated area must approve the creation of the district before that area may be included.

To create a groundwater conservation district, a petition must be submitted to TCEQ containing the signatures of a majority of the landowners within the proposed district, or, if there are more than 50 landowners in the proposed district, at least 50 of those landowners. After a petition is filed, TCEQ must hold a public meeting on district creation. Thereafter, if TCEQ certifies that the petition is administratively complete, it is directed to issue an order, notify the petitioners, and appoint temporary directors. If territory from more than one county is included in the district, temporary directors are appointed by the county commissioners courts.

After a district has been created by TCEQ, an election is held to approve the creation of the district and to elect permanent directors. The creation of the district passes upon majority approval. At an election to create a district, the temporary directors may include a proposition for the issuance of bonds or notes, the levy of taxes to retire such bonds or notes, and the levy of a maintenance tax. If a majority of the voters are against the levy of a maintenance tax, the district shall set production fees to pay for the district's regulation of groundwater in the district.

The board of directors of a district consists of not fewer than five and not more than 11 directors elected for four-year terms. The board elects a president, vice president, secretary, and any other officers or assistant officers as the board may deem necessary.

Chapter 36 establishes the right of districts to enter into contracts; to establish employee benefits; to make and enforce rules; and to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions. A district must hold a rulemaking hearing before adopting rules affecting the district. However, under some circumstances a board may adopt emergency rules with

no prior notice or hearing or with an abbreviated prior notice and hearing.

Chapter 36 grants districts the authority to build, acquire, or obtain property; to purchase, sell, transport, and distribute surface water or groundwater; and to exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property if that property interest is within the boundaries of the district and is necessary for conservation purposes. The power of eminent domain may not be used for condemnation of land for the purpose of acquiring rights to groundwater, surface water, or water rights or for production, sale, or distribution of groundwater or surface water. District employees and agents are also granted the right to enter any land to carry out authorized activities related to the duties of the district.

Under Chapter 36, a district must require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may also promulgate rules requiring a person to obtain a permit or an amendment to a permit from the district for the transfer of groundwater out of the district. However, the district may exempt wells from permit requirements. Districts are authorized to regulate by rule the spacing of water wells and the production of groundwater.

Chapter 36 authorizes the district's board of directors to issue and sell bonds and notes. However, bonds or notes secured in whole or in part by taxes may not be issued by the district until authorized by a majority of the voters in the district.

Chapter 36 authorizes the district's board of directors to annually levy taxes to pay the bonds issued by the district that are payable in whole or in part by taxes. However, the board may not levy a tax to pay the maintenance and operating expenses of the district until the tax is approved by a majority of the voters. A district may also assess a transportation fee and set fees for administrative acts of the district and shall collect fees for all services provided outside the boundaries of the district. A district may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn.

WATER CONTROL AND UTILITY DISTRICTS

► Provisions Applicable to All Districts

Chapter 49 (Provisions Applicable to All Districts), Water Code, contains provisions that pertain to all general and special law districts, except districts governed by Chapter 36, Water Code, unless stated elsewhere in law. The term “district,” as used in the chapter, also does not apply to navigation districts, port authorities, or any conservation and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1951.

Chapter 49 contains general administrative provisions for districts, including their creation and organization, officers, meetings, records, contracts, employee relations, elections, fiscal matters, annexation or exclusion of land, and dissolution.

Pursuant to Chapter 49, before issuing any bonds or other obligations, an election must be held within the boundaries of a proposed district to determine whether the district shall be established and, if the directors of the district are required by law to be elected, to elect permanent directors. Except as otherwise specified, the members of the board of a district serve four-year terms.

Chapter 49 provides that a district may not levy an operation and maintenance tax until it is approved by a majority of voters. In most instances, a district may not issue bonds unless TCEQ determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds.

Chapter 49 grants districts powers and duties that permit them to carry out their functions, including the ability to adopt necessary fees and charges, issue contracts, serve areas outside the district, acquire property, use rights-of-way, and enter land. Moreover, a district or water supply corporation may exercise the right of eminent domain to acquire property necessary for water, sanitary sewer, storm drainage, flood drainage, or control purposes or for any other of its projects or purposes. Eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

Chapter 50 (Provisions Generally Applicable to Districts), Water Code, establishes provisions relating to write-in voting for board members of water districts under Chapters 50 through 55 and Chapter 58, Water Code, and prohibits some water districts from issuing bonds under certain conditions.

The entirety of Chapter 50, with the exception of Sections 50.004 and 50.107, was repealed by S.B. 626, 74th Legislature, Regular Session. Some parts of the Water Code (Sections 36.059 and 49.101) contain provisions similar to those of Section 50.004, while others (Sections 36.171 and 49.181) contain provisions similar to those of 50.107. However, it is uncertain whether Sections 50.004 and 50.107 are legally nonsubstantive.

► Water Control and Improvement Districts

Chapter 51 (Water Control and Improvement Districts), Water Code, provides for the creation of water control and improvement districts. Those districts organized under Section 52, Article III, Texas Constitution, may provide for the improvement of rivers, creeks, and streams to prevent overflows, to permit navigation or irrigation, or to aid in these purposes; or for the construction and maintenance of pools, lakes, reservoirs, dams, canals, and waterways for irrigation, drainage, or navigation, or to aid these purposes. Districts organized under Section 59, Article XVI, Texas Constitution, may provide for the control, storage, preservation, and distribution of their water and floodwater and the water of their rivers and streams for irrigation, power, and all other useful purposes; the reclamation of arid, semiarid, and other land; the reclamation, drainage, conservation, and development of forests, water, and hydroelectric power; the navigation of coastal and inland water; the control, abatement, and change of any shortage or harmful excess of water; the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and the preservation and conservation of all natural resources of the state.

A water control and improvement district may be created under and subject to either Section 52, Article III, Texas Constitution, or Section 59, Article XVI, Texas Constitution. A district may include all or part of one or more counties and any other political subdivision of



the state or any defined district. The areas composing a district do not have to be contiguous. No district may include territory located in more than one county except by a majority vote of the electors in each county sought to be included in the district.

A petition requesting creation of a district must be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of the land in the district. If there are more than 50 titleholders, the petition is sufficient if signed by 50 of them. If the land in the proposed district lies within one county, the county commissioners court considers the creation of the district; if the land lies in two or more counties, the creation of the district is considered and ordered by TCEQ. Upon approval of creation, the commissioners court or TCEQ appoints five directors who serve until their successors are elected or appointed.

Under Chapter 51, the governing body of any water improvement district, levee improvement district, irrigation district created under Section 52, Article III, or irrigation or conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, may convert the district to a water control and improvement district operating under Chapter 51. The governing body of a water control and improvement district may convert the district to a fresh water supply district operating under Chapter 53.

Water control and improvement districts are governed by a board of five directors. The statute provides districts with rulemaking authority for district purposes; to construct necessary works and improvements, including culverts and bridges; to enter into contracts, most of which are contingent on voter approval; to transfer water rights, sell waterpower privileges and surplus water, and pump water to another district; to dispose of waste and control storm water; and to add land to the district.

Chapter 51 contains provisions for a district to establish a construction fund, maintenance fund, amortization and emergency fund, and interest and sinking fund. Districts are provided statutory authority to issue bonds. Bonds issued by districts operating under Section 52, Article III, Texas Constitution, must be approved by two-thirds of the voters. Bonds issued by districts operating under

Section 59, Article XVI, Texas Constitution, must be approved by a majority of the voters. Taxes levied by a district may be assessed on an ad valorem or benefit basis. Chapter 51 also provides for the consolidation, division, and dissolution of districts.

► Fresh Water Supply Districts

The constitutional basis for Chapter 53 (Fresh Water Supply Districts), Water Code, which provides for the creation of fresh water supply districts, is Section 59, Article XVI, Texas Constitution. Fresh water supply districts are created to conserve, transport, and distribute fresh water from any sources for domestic and commercial purposes. A district is authorized under Chapter 53 to acquire water rights and privileges and to enter into certain contracts with an authorized water district or a water supply corporation, upon majority vote of the governing bodies of the fresh water supply district and the water district or water supply corporation. Districts created under this statute may also construct levees, bridges, and other improvements necessary to secure fresh water; acquire, operate, and maintain sanitary sewer systems to control wastes if no other public sanitary sewer system is available; and regulate the installation, maintenance, and operation of plumbing fixtures and facilities inside the district. Fresh water supply districts may also issue bonds and incur debt for the purposes of Chapter 53, but may not issue bonds or incur debt to be paid from revenues and taxes unless approved by a majority of district voters. Districts may assess property taxes upon the issuance of bonds.

Under the provisions of Chapter 53, fresh water supply districts are created by petition, hearing, and election. To be sufficient, a petition for creation of a district must be signed by a majority of the persons who hold title to land in the proposed district that represents a total value of more than 50 percent of the value of all the land in the proposed district. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of those persons. The commissioners court of the county that includes the land in the proposed district has jurisdiction over all issues regarding the sufficiency of the petition and, if it approves the petition, appoints five temporary supervisors to serve on the district's board until five permanent supervisors are elected.

Chapter 53 authorizes a district located in a county with a population of 1.3 million or more and in which a municipality with a population of more than one million is primarily located, or a district adjacent to such a county, to divide into two new districts if it has no outstanding bonded debt and is not levying ad valorem taxes. The board of a district under this provision of the statute may order an election to determine whether the district shall assume the rights, authority, privileges, and functions of a road district. If operating as a road district, such a district is prohibited from issuing bonds or otherwise lending credit for road district purposes, unless approved by two-thirds of the district's voters.

► Municipal Utility Districts

Chapter 54 (Municipal Utility Districts), Water Code, provides for the creation of municipal utility districts (MUDs) under and subject to Section 59, Article XVI, Texas Constitution. A MUD is created for the control, storage, preservation, and distribution of its storm water, floodwater, and the water of its rivers and streams for irrigation, power, and all other useful purposes; the reclamation and irrigation of its arid, semiarid, and other land needing irrigation; the reclamation and drainage of its overflowed land and other land needing drainage; the conservation and development of its forests, water, and hydroelectric power; the navigation of its inland and coastal water; the control, abatement, and change of any shortage or harmful excess of water; the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and the preservation of all natural resources of the state.

A MUD may include the area in all or part of any county or counties including all or part of any cities and other public agencies. The land composing a district may consist of separate bodies of land separated by land that is not included in the district.

To create a district, a petition signed by a majority in value of the holders of title of the land within the proposed district must be filed with TCEQ. If there are more than 50 persons holding title, the petition is sufficient if it is signed by 50 holders of title to the land. The landowners must submit a request to cities for written consent to include in a district land that is

located within the corporate limits of the city or its extraterritorial jurisdiction.

Once a petition for creation of a MUD has been filed, TCEQ is required to give notice of an application and may conduct a hearing on the application if the agency determines that a hearing is necessary. TCEQ has jurisdiction to determine all issues on the sufficiency of the petition and creation of the district. If TCEQ grants the petition, it appoints five temporary directors to serve until permanent directors are elected.

Under Chapter 54, the rights, powers, privileges, authority, and functions conferred on a MUD are subject to the continuing right of supervision of the state, to be exercised by and through TCEQ.

Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, may be converted to a MUD. To do so, the governing body of such a district must pass a resolution requesting conversion and file it with TCEQ, which then holds a hearing to determine whether conversion to a MUD would serve the district's best interest and would be a benefit to the land and property included in the district. If TCEQ makes such a determination, no confirmation election is required.

Under Chapter 54, a MUD is governed by a board of five directors. The statute gives MUDs authority to carry out activities necessary to accomplish the purposes of the district, including the adoption and enforcement of reasonable rules and regulations. MUDs may not





use their power of eminent domain outside the district boundaries to acquire a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant; a site for a park, swimming pool, or other recreational facility except a trail; a site for a trail on real property designated as a homestead; or an exclusive easement through a county regional park.

MUDs and those requesting the creation of a MUD are permitted to petition TCEQ for road powers, provided that the road in question meets certain criteria. Chapter 54 provides MUDs with the right to enter into contracts or issue bonds for activities that relate to their duties. Bonds payable solely from revenues may be issued by resolution or order of the board without an election, but no bonds, except refunding bonds, payable wholly or partially from ad valorem taxes may be issued until authorized by a majority of voters at an election. An election is not required to pledge revenues to the payment of bonds. The statute provides for the levy of taxes by district boards to service debt on bonds.

Chapter 54 also establishes provisions for the consolidation and dissolution of MUDs.

► **Water Improvement Districts**

Chapter 55 (Water Improvement Districts), Water Code, establishes provisions for the creation of water improvement districts, which may provide for irrigation of the land within their boundaries. A district operating under Section 59, Article XVI, Texas Constitution, may furnish water for domestic, power, and commercial purposes. A district may also be formed to cooperate with the federal government under federal reclamation laws to construct irrigation and drainage facilities; purchase, extend, operate, or maintain constructed facilities; or assume, as principal or guarantor, indebtedness to the United States on account of district land. The powers of water improvement districts are for the purpose of helping the districts maintain the purity of district water, protect the preservation and use of the water, protect the lives of persons who desire to go on, over, or across the water, and ensure the safety of persons using the water.

According to Chapter 55, a water improvement district may be created under and subject to the limitations of

Section 52, Article III, or Section 59, Article XVI, Texas Constitution. A district may include all or part of one or more cities, towns, villages, and municipal corporations, but no land may be included in more than one district at any one time.

A petition requesting creation of a district must be submitted to the county commissioners court and signed by a majority of the persons who hold title to land in the proposed district, representing a total value of more than 50 percent of the value of all the land in the proposed district. However, if there are more than 50 titleholders, the petition is sufficient if signed by 50 of them. After holding a hearing on the petition, the judgment rendered by the commissioners court is final, but may be appealed to the district court. Chapter 55 also contains provisions that allow the creation of a district composed of land in two or more counties.

Under Chapter 55 and upon the petition of 20 percent of the landowners in the district, an election must be held to determine whether a water improvement district created under Section 52, Article III, Texas Constitution, shall be converted into a water improvement district operating under the authority of Section 59, Article XVI, Texas Constitution.

A water improvement district is governed by a board of five directors. Chapter 55 authorizes districts to purchase or construct improvements and facilities; construct bridges and culverts; contract with the federal government; acquire, sell, and transfer water rights; supply water to cities outside the district; sell surplus water; pump and deliver water to land near the district; and contract for toll bridges and ferry services. The statute also grants districts rulemaking authority.

Chapter 55 provides for the creation of a construction and maintenance fund and a maintenance and operating fund. When a district incurs a debt or obligation, it is required to provide for payment of the debt or obligation through either a general ad valorem tax or a tax on a benefit basis. Voter approval is not necessary to incur debts or obligations to defray ordinary maintenance and operating expenses or if the debt or obligation is to be retired from current revenues.

In a district operating under Section 52, Article III, Texas Constitution, two-thirds voter approval is necessary for the

issuance of bonds or to enter into a contract with the federal government. A majority vote is required for approval for districts operating under Section 59, Article XVI, Texas Constitution. Districts may issue negotiable revenue bonds with a total par value of not more than \$100,000 without holding an election, but otherwise must seek voter approval. When bonds cannot be sold in a manner advantageous to the district, Chapter 55 authorizes districts to obtain loans of not more than the amount of the unsold bonds.

After bonds have been approved, the board of directors must levy a tax on all property in the district sufficient to pay the interest on the bonds, a deposit into the district's sinking fund, and expenses for assessing and collecting taxes. The board of a district operating under Section 59, Article XVI, Texas Constitution, may limit the power of the district to incur debt and issue bonds. If a qualifying petition against the proposed limitation is submitted, an election must be called and voters must give their approval for the limitation to take effect.

Chapter 55 authorizes districts to establish charges for the use and sale of water, power, and other services to pay debts and to accomplish other purposes of the district. The statute also establishes procedures for the consolidation and dissolution of districts.

► Drainage Districts

Chapter 56 (Drainage Districts), Water Code, authorizes drainage districts to control and supervise the construction and maintenance of canals, drains, ditches and levees, and other district improvements. They may construct necessary bridges and culverts and other additions and improvements to the drainage system. The statute grants drainage districts authority to enter into contracts for improvements with the federal government and into interlocal agreements with other political subdivisions.

Drainage districts are created under and subject to the limitations of Section 52, Article III, or Section 59, Article XVI, Texas Constitution. They may include all or part of any village, town, or municipal corporation, but land included in one district may not be included in any other drainage district.

Any person may present a petition to a county

commissioners court requesting the creation of a drainage district. The petition must be signed by at least 25 of the resident freehold taxpayers of the proposed district, or by at least one-third of the resident freehold taxpayers of the district if there are less than 75 of them, whose land might be affected by creation of the district. Upon receipt of a petition, the commissioners court holds a hearing and either submits findings in favor of the proposed district or dismisses the petition.

Chapter 56 provides an alternative procedure for the creation of drainage districts, under which the landowners of a defined area of territory not included in a district may file with the commissioners court a petition requesting an election on the creation of a district. This petition must be signed by registered voters residing in the territory equal in number to at least five percent of the number of votes received in the territory to be included by all candidates in the most recent gubernatorial general election. After holding a hearing, if the commissioners court determines that the petition meets requirements, it orders an election on the creation of the district and whether the district should issue bonds and levy taxes to pay for the bonds.

A drainage district is governed by a board of three directors, unless special law provides otherwise. When a district is established, the commissioners court appoints three directors to serve until permanent directors are elected. In a district in which special law requires the appointment of directors, and unless otherwise specified in special law, a majority of the real property taxpayers of the district may petition an election of the district's directors.

Chapter 56 allows the board of any district to transfer its powers, rights, and duties to the commissioners court of the county in which the district is wholly located, upon passage of resolutions by both entities authorizing the transfer.





Except as otherwise provided, the commissioners court has exclusive jurisdiction over contests and objections to creating a district, matters relating to creating a district, and all proceedings of a district during its organization.

Chapter 56 provides for a construction and maintenance fund and an interest and sinking fund for drainage districts. Any drainage district may issue bonds as provided in Chapter 56 to pay for drainage improvements. Drainage districts are also allowed under certain circumstances to issue negotiable tax anticipation notes or bond anticipation notes.

After bonds are authorized at an election, the board of directors of a district is directed to assess property taxes to pay interest and principal on the bonds; to maintain, repair, and preserve district improvements; and to pay legal debts, demands, and obligations of the district. Districts operating under Section 52, Article III, Texas Constitution, may not assess a tax greater than one-half of one percent of the total assessed valuation of the district for that year. Chapter 56 establishes provisions under which a district, upon receiving a petition from taxpayers, is required to hold an election to levy taxes on the benefit basis, with two-thirds voter approval necessary for the proposition to carry.

Chapter 56 establishes provisions and elections for the dissolution of a drainage district, the annexation of territory not included in a drainage district by that district, and the consolidation of two or more districts.

► Levee Improvement Districts

According to Chapter 57 (Levee Improvement Districts), Water Code, levee improvement districts are created pursuant to Section 59, Article XVI, Texas Constitution, in order to construct and maintain levees and other improvements; to reclaim lands from overflow; to control and distribute the waters of rivers and streams; and to provide for the proper drainage and other improvement of the reclaimed land.

To create a levee improvement district, a petition must be submitted to the commissioners court of a county, signed by the owners of a majority of the acreage of the proposed district. Thereafter, the commissioners court

holds a hearing and, if it determines that the district should be created, establishes the district.

Upon petition by the owners of a majority of the acreage of a district and approval by the commissioners court of a county, an already existing district that is organized under state law and for the purpose of reclaiming lands through a system of levees and drainage may exercise the same rights, powers, and privileges as those districts created under Chapter 57. They are also entitled to exercise all of the enlarged powers which may be conferred under Section 59, Article XVI, Texas Constitution.

A levee improvement district is governed by a board of three directors, appointed by the commissioners court that approves the district. After creation of a district, an election may be held, upon petition of at least 100 electors in the district, to determine whether the directors for the district will be elected rather than appointed. In districts that have elected boards, the board consists of five directors.

Chapter 57 authorizes levee improvement districts to enter into contracts; adopt and enforce reasonable rules and regulations; construct necessary levees, bridges, and other improvements; levy property taxes; and issue levee improvement bonds upon voter approval. If a district wants to operate without issuing bonds, the district's board of directors may arrange for contributions from landowners or other sources to provide needed funds.

Chapter 57 also establishes procedures under which a levee improvement district may be dissolved.

► Irrigation Districts

Chapter 58 (Irrigation Districts), Water Code, provides for the creation of irrigation districts, which are limited purpose districts established primarily to deliver untreated water for irrigation and to provide for the drainage of lands and such other functions as are incidental to the accomplishment of the district's limited purposes.

An irrigation district may be created under and subject to Section 52, Article III, or Section 59, Article XVI, Texas Constitution. A district may include all or part of one or more counties or any other political subdivision of the

state or any defined district, providing the land contained therein is agricultural in character. The areas composing a district do not have to be contiguous. However, each segregated area, before it may be included in the district, must cast a majority vote in favor of the creation of the district. No district may include territory located in more than one county except by a majority vote of the electors in each county sought to be included in the district.

A petition requesting creation of a district must be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of all the land in the proposed district. If there are more than 50 persons holding title to land, the petition is sufficient if signed by 50 of them.

If the land to be included in the district is within one county, the creation of the district is considered and ordered by the commissioners court, but if the land is located in two or more counties, the creation of the district is considered and ordered by TCEQ. If the petition for creation of a single-county district is granted, the commissioners court or TCEQ appoints five temporary directors until their successors are elected or appointed.

No city, town, or municipal corporation may be included in a district unless approved by a majority of the votes cast by electors. No district, the major portion of which is located in one county, may be organized to include land in another county unless the voters in the other county confirm and ratify the creation of the district.

Chapter 58 provides for the conversion into an irrigation district of any water improvement district or water control and improvement district which furnishes water for irrigation and does not furnish treated water or sewer services.

Five directors serve on an irrigation district's board. Districts are granted powers that permit them to accomplish the purposes for which they were created, including the construction of necessary works and improvements, including bridges and culverts; the purchase of machinery and supplies; rulemaking authority; and the power to contract. The electors of the district must vote to approve every contract involving

the payment of construction charges to the federal government.

Chapter 58 includes provisions for the transfer of water rights by an irrigation district, the sale of waterpower privileges and surplus water, and the pumping of water to other districts. The board of directors is granted rulemaking authority over issues related to water service, assessments, and payment for service. The statute also includes provisions for the establishment of a construction fund, a maintenance fund, an amortization and emergency fund, and an interest and sinking fund.

Chapter 58 authorizes the board of directors to borrow funds to meet the obligations of the district if such funds are not available. The statute grants authority to issue bonds to districts operating under Section 52, Article III, Texas Constitution, upon approval of two-thirds of voters in the district. However, such districts may not issue bonds or lend credit in an amount greater than one-fourth of the assessed valuation of the real property in the district. Districts operating under Section 59, Article XVI, Texas Constitution, may issue bonds to provide improvements and maintenance of improvements to achieve the purposes for which the district was created. Bonds may be issued or indebtedness created only upon approval of a majority of voters. Districts may also issue preliminary bonds to pay for district operations, upon approval by the electors in the district.

Taxes to pay for district activities may be levied on the ad valorem basis, the basis of assessment of specific benefits, the basis of assessment of benefits on an equal sum per acre, or the ad valorem basis for part of the total tax or defined area or property and on the benefit basis for the other part of the tax or defined area or property. Chapter 58 establishes provisions for adding and excluding territory from a district, consolidating districts, and dissolving districts.

► Regional Districts

Chapter 59 (Regional Districts), Water Code, establishes provisions for the creation of regional districts for water, sanitary sewer, drainage, and municipal solid waste disposal and only applies to counties with a



population of at least 3.3 million or bordering on such a county.

Under Chapter 59, a petition for the creation of a regional district may be submitted to TCEQ by the boards of at least 20 percent of the total number of municipal districts to be included in the proposed district; the owner or owners of 2,000 or more contiguous acres; the commissioners court of one or more counties; or the governing body of any city.

Under Chapter 59, land located within the corporate limits or extraterritorial jurisdiction of a city may not be included in a regional district unless the city grants its written consent by resolution or ordinance. If the governing body of a city does not grant such permission, the person or entity requesting the district may petition the governing body of the city to make available the water, sewer, or drainage service to be provided by the district. Failure of the governing body of the city and the requesting district to enter into a mutually agreeable contract within six months of receipt of the request constitutes authorization to initiate proceedings to include the land in the district. TCEQ is authorized under Chapter 59 to grant the petition for creation of a regional district if it finds that the district would benefit the territory to be included in the district. Before a district may be created pursuant to a petition granted by TCEQ, a confirmation election must be held within the boundaries of the proposed district.

The board of directors of a regional district is composed of five members, unless TCEQ is petitioned and approves a seven-member board. TCEQ appoints temporary directors until permanent directors can be elected in accordance with Chapter 49 (Provisions Applicable to All Districts), Water Code.

Chapter 59 authorizes regional districts to charge rates and issue bonds. Prior to issuing bonds or other obligations, a confirmation election must be held, and a majority of the votes cast must approve the establishment of the district.

Chapter 59 establishes provisions under which certain municipal districts may be excluded from the regional district. If a city annexes or incorporates all or any part of the territory within a regional district, the city shall

succeed to the powers, duties, assets, and obligations of the district.

► **Special Utility Districts**

Special utility districts (SUDs) are addressed by Chapter 65 (Special Utility Districts), Water Code. SUDs are created to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the transportation of water; and to sell water to towns, cities, and other political subdivisions of the state, to private business entities, and to individuals. They are also created for the establishment, operation, and maintenance of fire-fighting facilities or for the protection, preservation, and restoration of the purity and sanitary condition of water within the district.

An SUD may include the area in all or part of one or more counties. The land composing a district is not required to be contiguous. Cities may place certain requirements on districts that operate within the city's corporate limits or extraterritorial jurisdiction.

Water supply or sewer service corporations may submit a certified resolution requesting the creation of a special utility district to TCEQ. If deemed necessary, TCEQ may hold a hearing on the resolution. TCEQ has complete jurisdiction regarding the sufficiency of the resolution and the creation of the district.

If a district is created, TCEQ appoints as temporary directors for the district those who are listed in the resolution requesting the district's creation. Thereafter, an election is held to select not less than five and not more than 11 directors to serve either concurrent or staggered terms not to exceed three years.

Chapter 65 authorizes SUDs to engage in and use any works, improvements, facilities, plants, equipment, and appliances necessary to accomplish their purpose. SUDs may collect solid waste, operate and maintain a solid waste collection and disposal system, and charge for the facilities or services provided by the system. Chapter 65 also grants SUDs rulemaking authority over their operations.

Under Chapter 65, SUDs are prohibited from assessing

operation and maintenance taxes. However, they do have authority to issue bonds and notes.

Chapter 65 establishes procedures that allow two or more SUDs to consolidate into one district, upon voter approval. The statute also contains provisions for the dissolution of SUDs.

► Stormwater Control Districts

Chapter 66 (Stormwater Control Districts), Water Code, authorizes the creation of stormwater control districts, pursuant to Section 59, Article XVI, Texas Constitution, to control stormwater and floodwater and to control and abate harmful excesses of water for the purpose of preventing area and downstream flooding in all or part of a watershed. A district may be composed of contiguous or noncontiguous areas within all or part of the watershed of a river, stream, creek, or bayou.

In order to create a stormwater control district, a petition must be submitted to the executive director of TCEQ by a person or the commissioners courts in the counties in which all or part of the district is to be located. This petition must be signed by at least 50 persons who reside within the boundaries of the proposed district or by a majority of the members of the commissioners court in each county in which all or part of the district is to be located. TCEQ may hold a hearing on the petition, if it determines that this is necessary, and then rule on whether to grant the petition and create the district.

If TCEQ grants the petition, it appoints five persons to serve as temporary directors of the district. TCEQ is directed to consider for these appointments the recommendation of at least five persons, to be submitted by the person who originally submitted the petition for creation of the district. Thereafter, the five-member board of directors is elected as provided by Chapter 49 (Provisions Applicable to All Districts), Water Code.

Chapter 66 authorizes stormwater control districts to acquire land to construct facilities; construct regional stormwater retention and detention pond facilities; construct outfall drainage ditches and similar facilities; provide for and use the land on which regional

stormwater retention and detention pond facilities are located for park and recreational areas when the area is not used for holding water; provide financing for land, facilities, and the construction of facilities; enter into business arrangements and agreements with other governmental agencies and persons; and apply for, accept, receive, and administer gifts, grants, loans, and other funds.

On completion of all facilities proposed to be built by the district, the district is required to transfer title to the land and facilities other than detention ponds to the county or counties in which the land and facilities are located.

Chapter 66 authorizes the board of directors of a district to issue and sell bonds to acquire land and construct facilities and to levy taxes on an annual basis. Chapter 66 also establishes provisions for the dissolution of a stormwater control district.

► Ship Channel Security Districts

Chapter 68 (Ship Channel Security Districts) was added to the Water Code by H.B. 3011, 80th Legislature, Regular Session. Ship channel security districts are modeled after management districts and are created to help provide layered, system-wide security in a ship channel area.

Chapter 68 specifies that Chapter 49 (Provisions Applicable to All Districts), Water Code, does not apply to ship channel security districts. Under Chapter 68, a ship channel security district may be created only by the commissioners court of a county with a population of 3.3 million or more that has a ship channel in the county, and only if the commissioners court receives a petition



requesting the district's creation, signed by the owners of a majority of facilities in the proposed district and the owners of a majority of the assessed value of facilities in the proposed district. The commissioners court, upon receiving such a petition, holds a hearing and may order the creation of the proposed district.

The board of directors of a ship channel security district is comprised of at least 10 but not more than 13 directors, to be selected according to criteria enumerated in statute. Directors serve staggered two-year terms. If a port authority is located in the district, the executive director or his or her designee serves as a director. Moreover, the commissioners court appoints two directors for each security zone from a list of two persons nominated by a majority vote of the facility owners in each security zone. Each nominated person must be employed by a facility owner at a facility in the zone.

Under Chapter 68, ship channel security districts are granted all powers necessary or required to accomplish their purposes and, except as provided, have the powers of a district created under Chapter 375 (Municipal Management Districts in General), Local Government Code. Ship channel security districts have rulemaking authority and are authorized to enter into contracts for any district purpose. The board of directors determines what security projects or security services the district will perform.

Chapter 68 grants ship channel security districts certain property rights and the ability to apply for grants or loans, but does not provide such districts the power of eminent domain or the ability to levy taxes or issue bonds. However, the board of directors of the district may impose an assessment against most facilities for any district purpose.

Chapter 68 establishes provisions for the dissolution of ship channel security districts.

► **Sale of Electric Energy by River Authorities**

Chapter 152 (River Authorities Engaged in Distribution and Sale of Electric Energy), Water Code, applies to river authorities that, directly or through a nonprofit corporation created under Section 152.051, Water Code, to act on behalf of the river authority, are engaged in the distribution and sale of electric

energy to the public. The statute defines the powers of nonprofit corporations that are created to represent river authorities, including the power to issue bonds or other obligations or otherwise borrow money on behalf of the river authority, and details the organizational and operational relationship between river authorities and the corporations that represent them.

Chapter 152 authorizes a river authority to undertake or participate in a program intended to conserve electric energy or water. River authorities that generate an annual average of at least 55 million kilowatt hours of electric energy are authorized to sponsor and participate in an economic development program intended to strengthen the economic base and further the economic development of the state.

Chapter 152 authorizes river authorities to issue revenue bonds, notes, or other obligations for qualified purposes and authorizes river authorities or corporations that represent them to enter into a hedging contract and related security and insurance agreements.

Under Chapter 152, river authorities may provide electric transmission services on a regional basis to qualified customers and may use electric transmission facilities, with certain restrictions.

► **Auxiliary Water Laws**

Chapter 1 (Use of State Water), Auxiliary Water Laws, authorizes water power control districts to enter into contracts for the sale or disposal of salt water for the purpose of pollution control. Districts may issue revenue bonds, without holding an election and upon approval of the district's board of directors, for the construction and acquisition of pipelines, pumps, and all facilities necessary to accomplish this aim. Chapter 1 also establishes provisions for contracts between districts and nonprofit corporations for pollution control works. Under this statute, the Texas Water Commission (now the Texas Commission on Environmental Quality) must approve the issuance of bonds involving federal funds.

The purpose of Chapter 11 (In General), Auxiliary Water Laws, is to promote participation in the National Flood

Insurance Program, to provide protection against flood losses, and to encourage sound land use by minimizing exposure of property to flood losses. Under the statute, political subdivisions of the state are authorized to take all necessary and reasonable actions to comply with the requirements of the National Flood Insurance Program. With respect to the federal program, Chapter 11 directs the Texas Water Development Board (TWDB) and the Texas Department of Insurance (TDI), as successor to the State Board of Insurance, to provide aid and advice and to cooperate with each other, political subdivisions of the state, and the United States Department of Housing and Urban Development. TDI, TWDB, and political subdivisions are granted rulemaking authority to exercise the powers granted by the statute.

Chapter 11 also specifies the member districts belonging to the Red Bluff District.

► **Water Control and Preservation Districts**

Chapter 3 (Water Control and Preservation Districts), Auxiliary Water Laws, authorizes the establishment of one or more water control and preservation districts in certain counties. The purpose of such districts is to control and preserve the purity of waters that are situated in or flow through the district through the prevention of the inflow of salt water or other harmful substances, or by the changing of such waters from salt to fresh water, and the impounding of fresh water for such purposes. The statute gives these districts powers to carry out any improvements or construction necessary to accomplish their purpose and to issue bonds to pay for those activities.

Chapter 3 establishes the mode by which water control and preservation districts are created, including the requirement of a petition signed by 25 resident taxpayers of the proposed district, a hearing, and a decision regarding the petition that is exclusively determined by the commissioners court of the county in which the district is to be located. The commissioners court, if it finds a district to be feasible, determines the cost of the proposal and the amount of bonds that should be issued and orders an election on the proposed district and relevant taxes. A district must be approved by a two-thirds vote. For an approved district, the commissioners court appoints a three-member board

of directors, each appointed for a term of two years, and all successive directors. Chapter 3 also establishes provisions for the creation of districts that lie within two or more counties.

The board of directors of a water control and preservation district has control over the management of all district affairs, including the issuance of bonds and levying of property taxes; may employ all necessary employees for the proper conduct and operation of the district; and is authorized to perform all actions deemed necessary and proper to carry out the purposes of the district. The directors are also required to audit the district annually. The district may, through its directors, sue and be sued in the name of the district.

The board of directors has the authority to acquire necessary rights-of-way and property rights and to enter onto lands to make inspections, maps, and profiles. Districts are granted the power of eminent domain in connection with necessary construction projects. Chapter 3 also allows two or more districts to jointly contract for improvement and construction projects.

Special Purpose Districts **ECONOMIC AND COMMUNITY** **DEVELOPMENT**

In 1987, the Texas Constitution was amended to recognize the importance of economic development by finding that economic development serves a public purpose. The Texas Legislature has recognized the importance of community and economic development by passing legislation that provides economic development incentives through various means. Sections in the Local Government Code authorize the creation of special districts that promote urban development and renewal and community involvement, such as library districts, arts districts, and improvement and development districts, in addition to providing for financial assistance through tax abatements or grants. Title 4, Special District Local Laws Code, lists the development and improvement districts specifically established by the legislature.

► Arts and Entertainment Districts

Chapter 309 (Arts and Entertainment Districts), Local Government Code, authorizes a municipality with a population of more than one million to designate a defined area in the municipality as an arts and entertainment district to develop a public and private collaboration that plays a vital role in the cultural life and development of the community. Chapter 309 provides that the district should contribute to the public through interpretive, educational, and recreational uses. Municipalities are authorized to solicit grants and donations and provide incentive and tax breaks to persons involved in the development of the district.

► Sports Facility Districts

The 71st Legislature, Regular Session, 1989, enacted H.B. 1738, authorizing counties to create sports facility districts to oversee the development of multi-use facilities for sport and recreational activities. Chapter 325 (Sports Facility District Established by County), Local Government Code, authorizes the commissioners court of a county to create a sports facility district by order to finance and effect the construction, acquisition, or operation of a sports facility to serve the county.

A board of directors is appointed by the commissioners court and the governing bodies of the municipality and the school district with the largest population in the county. Board members serve two-year terms and meet at least once each month.

Sports facility districts have the power of eminent domain if the board determines that acquiring land by

condemnation for the facility is necessary. The district also has the authority to issue revenue bonds to finance the development of the facility; however, no taxing authority is provided to these districts.

► Library Districts

In 1997, the 75th Legislature, Regular Session, passed S.B. 1674, which authorized the creation of library districts to provide convenient access to a public library for children and residents of rural and suburban areas and underserved areas. A library district establishes, equips, and maintains one or more public libraries for the dissemination of general information relating to the arts, sciences, and literature.

A library district is created upon a petition submitted to the commissioners court of a county, signed by at least five percent of the number of voters in the territory of the proposed district who voted in the most recent gubernatorial election. If the commissioners court determines that the petition satisfies the requirements outlined in Chapter 326 (Library Districts), Local Government Code, the court is required to grant the petition and call and hold an election for approval of creation of the district by a majority of the votes cast in the election. The election also must provide for the approval and adoption of a sales and use tax on the receipts from the sale at retail of taxable items in the district. In addition to the imposition of a sales and use tax, the district may also impose an excise tax on the use, storage, or other consumption of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective.

The commissioners court, upon approval of creation of the district, is required to declare the five persons receiving the highest number of votes for trustee to be elected as such. A district has all of the powers, authority, rights, and duties that will permit the accomplishment of the purposes for which the district was created, including the power to borrow money, purchase and improve land, and acquire and maintain any machinery or appliances necessary. Library districts may not be expanded unless the commissioners court holds an election in which a majority of the voters of the additional territory to be included in the district approve the expansion and the sales and use tax to be imposed.



In 2005, during the 79th Legislature, Regular Session, S.B. 1205 was passed authorizing the creation of multi-jurisdictional library districts. The Multi-Jurisdictional Library Districts Act permits counties or municipalities, by resolution, to assume the role of a lead governmental entity and create the district by resolution. A public library created under this Act is required to be accredited by and meet the standards for basic public library services established by the Texas State Library and Archives Commission. Chapter 336 (Multi-Jurisdictional Library Districts), Local Government Code, sets forth the requirements and regulations relating to multi-jurisdictional library districts.

The lead governmental entity appoints four trustees to a seven-member board of trustees, while the most populous county in which the district is located appoints the three remaining trustees, unless the most populous county is the lead governmental entity, in which case the most populous municipality would make the appointments. Trustees serve staggered two-year terms.

Chapter 336 grants a multi-jurisdictional library district all of the authority necessary to accomplish the purposes of the district. A district is permitted to enter into contracts with any person for any purpose. Multi-jurisdictional library districts may acquire, lease, and sell property and any equipment, vehicles, or machinery necessary for their functions.

A multi-jurisdictional library district may impose an ad valorem tax as well as a sales and use tax. A district may also issue bonds at any time and for any amount it considers necessary or appropriate to acquire, construct, equip, or improve district facilities. On May 12, 2008, the Texas attorney general issued an opinion in response to a request from the Texas State Library and Archives Commission regarding whether statutory authority is sufficient to permit multi-jurisdictional library districts to collect ad valorem taxes or whether a constitutional amendment was required. The opinion states that the Texas Supreme Court has not determined whether the Texas Constitution impliedly prohibits the legislature from allowing a political subdivision to impose ad valorem taxes absent express constitutional authority; however, it seems more likely than not that a court would find that express constitutional authority is necessary prior to allowing a multi-jurisdictional library district to impose an ad valorem tax.

As of 2007, voters across the state had approved the creation, maintenance, and operation of 15 taxing library districts.

► Sports and Community Venue Districts

Chapters 334 (Sports and Community Venues) and 335 (Sports and Community Venue Districts), Local Government Code, authorize counties and municipalities to create a sports and community venue district to plan, acquire, establish, develop, construct, or renovate one or more venue projects in the district subject to voter approval. The county judges or mayors appoint a board of at least four directors who serve staggered two-year terms.

The district is required to prepare a resolution providing for the planning, acquisition, establishment, development, construction, or renovation of a venue project, which must be submitted and approved by the Texas comptroller of public accounts (comptroller). After performing an analysis and determining whether the implementation of the resolution will have a significant negative fiscal impact on state revenue, the comptroller must provide written notice to the district of the results of the analysis. The resolution must also be submitted to a rapid transit authority that will determine whether the implementation of the resolution will have a significant negative impact on the authority's ability to provide services or will impair any existing contracts. Upon approval by the comptroller and, if applicable, the rapid transit authority, the board may order an election or elections on the question of approving and implementing the resolution.

A district is authorized to impose any tax that a municipality or county may impose under Chapter 334 subject to approval of the voters of the district, including a sales and use tax, a short-term motor vehicle rental tax, a tax on each ticket sold for admission to an event at the venue, a parking tax, a hotel occupancy tax, and a facility use tax imposed on major league teams that play games in the venue, among other taxes. A sports and community venue district may issue bonds, including revenue bonds and refunding bonds, or other obligations to pay the costs of the approved venue project. Such a district also has the power of eminent domain.



► Public Improvement Districts

The creation of public improvement districts (PID) by counties and municipalities is authorized under Chapter 372 (Improvement Districts in Municipalities and Counties), Local Government Code. PIDs benefit developers seeking to avoid using their own funds for infrastructure improvements such as streets, water, and sewer lines. Creation of a PID requires submittal of a petition to the governing body of the county or municipality in which the proposed PID is located, signed by owners of at least 50 percent of the appraised value of taxable real property and either 50 percent of the number of property owners in the PID or owners of at least 50 percent of the land area. Upon finding that the establishment of a PID promotes the interests of the municipality or county, a PID may be established for the purposes of landscaping; constructing or improving sidewalks, streets, or parking facilities; constructing or improving water and wastewater facilities; installing art; and constructing or improving libraries. The statute also allows for a project to provide special supplemental services, such as promotion and advertising of the district or safety and security services.

Chapter 372 sets forth the general requirements of the petition and permits the governing body to appoint an advisory board to develop and recommend an improvement plan to the governing body. The governing body of the municipality or county is required to hold a public hearing, after notice is published in a newspaper of general circulation, at which the governing body will make findings as to the advisability of the improvements. Within six months after the hearing, the governing body may authorize the proposed improvements by adoption of a resolution that takes effect when notice of the resolution has been published one time in a newspaper of general circulation.

The advisory board is required to prepare a five-year service plan that defines the annual indebtedness and projected costs for improvements. The service plan shall also include an assessment plan apportioning the cost of an improvement to be assessed against each parcel of property within the PID based on the special benefits accruing to the property because of the improvements. After the total cost of the improvement is determined, an assessment roll is developed stating the assessment against each parcel of land in the district. After proper notice, a public hearing is required to be held to consider and hear any objections to the

proposed assessments. Once all objections have been heard and passed on, the governing body by ordinance or order shall levy the assessment on the property, specifying the method of payment of the assessment. Such an assessment bears interest and acts as a first and prior lien against the property. After notice and hearing, the governing body may make supplemental assessments to correct omissions or mistakes or reassessments, as necessary.

Section 372.021 (Special Improvement District Fund), Local Government Code, authorizes a governing body intending to create a PID to levy a tax to support the establishment of a special improvement district fund that may be used to pay the costs of planning, administration, and initial improvements. While an improvement is in progress, the governing body may issue temporary notes or time warrants to pay for the costs of the improvement, and upon completion of the improvement, the governing body may issue revenue or general obligation bonds.

A public improvement district does not have the authority to exercise the power of eminent domain.

Chapter 372 also sets forth specific requirements and provisions relating to home-rule municipalities and counties of certain populations near the Gulf of Mexico, including the authorization to impose a sales and use tax under certain circumstances.

► Homestead Preservation Districts and Reinvestment Zones

Chapter 373A (Homestead Preservation Districts and Reinvestment Zones), Local Government Code, provides several tools for promoting and expanding affordable housing and preventing gentrification. The purpose of the chapter is to promote the ability of municipalities to increase home ownership, provide affordable housing, and prevent the involuntary loss of homesteads by existing low-income and moderate-income homeowners living in disadvantaged neighborhoods; to protect a municipality's interest in improving economic and social conditions within disadvantaged communities by enhancing the viability of home ownership among low-income and moderate-income residents in areas experiencing economic pressures; and to provide municipalities with a means to expand and protect the homestead interest of low-income and moderate-income families.

Under this chapter, municipalities are allowed to designate an area contiguous to a central business district as a homestead preservation district by ordinance under certain circumstances. The area must meet certain requirements relating to the number of residents and households in the area as well as the rate of unemployment and the poverty level. The purpose of a municipality designating such a district is to promote and expand the ownership of affordable housing and to prevent the involuntary loss of homesteads by existing homeowners living in the area. The statute authorizes a municipality that designates a district to provide tax-exempt bond financing, offer density bonuses, or provide other incentives to increase the supply of affordable housing and maintain the affordability of existing housing for low-income and moderate-income families.

Section 373A.101, Local Government Code, authorizes a political subdivision, by order or by ordinance, or a nonprofit organization to create or designate one or more homestead land trusts. The statute provides that the purpose of the trust is to control local land use and reduce absentee ownership, provide affordable housing for low-income and moderate-income residents in the community, promote resident ownership and control of housing, keep housing affordable for future residents, and capture the value of public investment for long-term community benefit.

The statute provides that a trust may acquire and retain title to land and may lease or sell housing units located on the land under long-term ground leases. However, the statute requires that the trust lease or sell the housing units only to families with a yearly income at or below 70 percent of the area median family income and that at least 40 percent of the housing units be sold or leased by the trust to families with a yearly income below 50 percent of the area median family income, with at least 10 percent of the units sold or leased going to families with a yearly income at or below 30 percent of the area median family income.

A municipality is also authorized to create a homestead preservation reinvestment zone for the development or redevelopment of affordable housing by providing tax increment financing. The municipality and the county in which the zone is located collect taxes on real property which are paid into a tax increment fund. Revenue from the tax increment fund is required

to be used toward the development, construction, and preservation of affordable housing in the zone by a political subdivision, a community housing development organization, a trust created or designated by a political subdivision, or another entity. The revenue must be expended to benefit families at or below certain poverty levels.

A municipality that has designated an area as a homestead preservation district is authorized to adopt a homestead land bank program in which a municipality acquires land foreclosed pursuant to a tax lien and sells it for purposes of affordable housing development. Subchapter E (Homestead Land Bank Program), Chapter 373A, Local Government Code, sets forth the requirements relating to the land bank program, including the right of first refusal required to be offered to certain organizations and the restrictions on occupancy and use of the property.

► **Municipal Management Districts**

Under Section 375.001(b), Local Government Code, municipal management districts (MMD) are necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the commercial areas of municipalities and metropolitan areas of this state. An MMD is created to supplement, rather than supplant, the services and obligations of the municipality. MMDs are created in areas devoted primarily to commercial development or business activity to expand and improve transportation and pedestrian facilities and systems and to landscape and develop certain areas that are necessary for the restoration, preservation, and enhancement of scenic and aesthetic beauty.

The statute requires an MMD to attempt to stimulate the growth of disadvantaged businesses, which are businesses owned by persons who have suffered the effects of discriminatory practices, by encouraging such businesses to participate in all aspects of the MMD. The statute also provides for the creation of a defense adjustment management authority to foster economic opportunity and promote a favorable business climate in areas around certain former defense bases that are intended to be annexed by a municipality, finding that the closure of such bases has had a negative impact on

the economic development of the areas within and surrounding those bases.

The requirements to create an MMD are set forth in Chapter 375 (Municipal Management Districts in General), Local Government Code. A petition, signed by the owners of a majority of the assessed value of the real property within the district or 50 persons who own real property in the proposed district, must be submitted to TCEQ. Section 375.022 (Petition), Local Government Code, sets forth the specific requirements of the petition. TCEQ or a person authorized by TCEQ, is required to set a date, time, and place for a hearing to consider the petition and to publish notice of the hearing once a week for two consecutive weeks in a newspaper of general circulation in the municipality in which the district is to be located. The petitioner is required to provide notice of the hearing by certified mail to each property owner within the proposed district who did not sign the petition 30 days prior to the hearing. If after the hearing TCEQ determines that the district is feasible, necessary, and a public benefit, it shall grant the petition and appoint the initial board of directors.

MMDs have the power to levy an ad valorem property tax for funding water, wastewater, drainage, road, or mass transit improvements and to levy impact fees pursuant to the procedures provided by Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments), Local Government Code. Under certain circumstances, an MMD may levy assessments against benefited property within the district similar to PIDs. The statute provides exemptions from such fees, assessments, and taxes for certain residential property, certain governmental entities, and recreational, park, or scenic use property.

An MMD may sue and be sued, incur liabilities, borrow money and issue notes, purchase and sell real and personal property, and enter into agreements. MMDs do not have the power of eminent domain.

► **Municipal Development Districts**

Chapter 377 (Municipal Development Districts), Local Government Code, provides for the creation of municipal development districts (MDD).

Section 377.003 (Constitutional Purpose) of the chapter states that the chapter creates a program under Section 52-a, Article III, Texas Constitution, authorizing the legislature to provide programs that promote and facilitate economic development.

MDDs are created for the purpose of constructing certain development projects, and the primary funding for those projects results from the imposition of a sales and use tax. Section 377.001 (Definitions), Local Government Code, defines “development project” as any project defined by Section 4B(a) of the Development Corporation Act or a convention center facility, civic center, or related improvements, including an auditorium, parking lots, and civic center hotels. A 4B project includes land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs and that are found to be suitable for the development, retention, and expansion of certain facilities. *See Article 5190.6, V.T.C.S., effective until April 1, 2009, or Sections 505.151 through 505.158, Local Government Code, effective on April 1, 2009.*⁴ An MDD expands upon the definition of a 4B project.

To create an MDD a municipality must call an election on the question of creating an MDD to plan, acquire, establish, develop, construct, or renovate one or more development projects beneficial to the district. The order calling the election must define the district’s boundaries. If a majority of the votes cast by voters in the proposed district favor creation of the MDD, the municipality must appoint a board of at least four directors, to serve two-year staggered terms, who establish a development project fund.

An MDD is authorized to accept grants or loans; acquire, sell, or lease property; employ personnel; and enter into contracts. An MDD is authorized to impose a sales and use tax, but not an ad valorem tax. All sales tax proceeds are deposited in the development project fund. The district may also issue revenue bonds and refunding bonds.

⁴ Article 5190.6, V.T.C.S., also provides for the creation of a “4A corporation,” in addition to the 4B corporation, but the general rule is that 4A corporations have applied to smaller cities, while 4B corporations applied to larger cities; however, due to changes in the law, the distinction is not clear.

► County Development Districts

Section 383.002 (Legislative Intent), Local Government Code, states that Chapter 383 (County Development Districts) “furthers the public purpose of developing and diversifying the economy of this state by providing incentives for the location and development of projects in certain counties to attract visitors and tourists.” The chapter sets forth legislative findings providing that small and medium-sized counties need incentives for the development of public improvements that attract visitors and tourists and that result in employment and economic activity, which is in the public interest, serves a public purpose, and promotes the economic welfare of Texans.

Chapter 383 authorizes the commissioners court of a county with a population of 400,000 or less to create a county development district (CDD). On petition of landowners, accompanied by a sworn statement indicating consent to creation signed by the holders in fee simple title to all of the land in the proposed district, the commissioners court shall set a date and time for a hearing for considering the creation of the proposed district. If the commissioners court finds that the petition meets the requirements listed in the statute and that the creation of the district and the proposed project is feasible and necessary and would serve the public purpose of attracting visitors or tourists to the county, the commissioners court shall make an order creating the district. The commissioners court is required to appoint a five-member temporary board of directors, who must conduct an election to confirm the creation of the district and authorize the imposition of a sales and use tax. The temporary board of directors becomes permanent if the creation of the district is confirmed.

A CDD is authorized to acquire and dispose of projects and is granted all of the other powers, authority, rights, and duties that will permit accomplishment of the purposes for which the district was created, including providing for general promotion and tourist advertising. Chapter 383 explicitly provides that a CDD has the powers of an MMD. Furthermore, a CDD may sue and be sued and is authorized to exercise the power of eminent domain. A CDD is funded through the issuance of bonds and the imposition of a sales and use tax.

A CDD may be dissolved upon petition by the board of directors and by order of the commissioners court if a majority of the board believes that the proposed undertaking is impracticable or cannot be successfully and beneficially accomplished or if all bonds and other debts of the district have been paid and the purposes of the district have been accomplished.

Section 352.107 (Hotel Tax Authorized for County Development Districts), Tax Code, authorizes a county through its commissioners court to impose a hotel occupancy tax within the boundaries of a county development district.

► County Assistance Districts

Chapter 387 (County Assistance District), Local Government Code, sets forth provisions relating to the creation and functions of a county assistance district (CAD). The statute authorizes the county commissioners court to call an election on the question of creating a CAD to perform certain functions, including the construction, maintenance, or improvement of roads or highways, the provision of law enforcement and detention services, the maintenance or improvement of libraries, museums, parks, or other recreational facilities, or the promotion of economic development and tourism. If the proposed county assistance district includes territory of a municipality, including a municipality that has created a development corporation, the commissioners court must provide notice of the court’s intent to create a CAD to the governing body of the municipality or to the board of directors of the corporation.

The commissioners court of a county acts as the governing body of a CAD. The CAD is authorized to perform any act necessary to the full exercise of the CAD’s functions; accept grants or loans; acquire, sell, lease, convey, or otherwise dispose of property; employ necessary personnel; adopt rules; and contract with public or private persons to perform any act authorized in the statute. A CAD may impose a sales and use tax, if it is approved at the election; however, a CAD is prohibited from levying an ad valorem tax.

Special Purpose Districts

HEALTH AND SAFETY DISTRICTS

Numerous special purpose districts are related to health and safety issues that are limited to the specific geographic area in which the districts are established. Special districts with health care functions include hospital districts, health services districts, and emergency services districts.

► Hospital Districts

Section 9, Article IX, Texas Constitution, authorizes the legislature to provide for the creation, establishment, maintenance, and operation of hospital districts. The constitution requires that hospital districts assume the full responsibility of providing medical and hospital care for the needy inhabitants of the district.

Chapter 286 (Hospital Districts Created by Voter Approval), Health and Safety Code, provides for the creation of a hospital district by petition signed by at least 100 voters within the proposed territory of the district, submitted to the county judge, and upon a hearing to consider its creation. The creation of the district must be confirmed by an affirmative vote of a majority of the votes cast by voters in the district. The petition may specifically name persons as temporary members of the board of directors, or may request that the commissioners court appoint temporary directors, to serve until an election is held and the directors are elected in the manner prescribed by the petition.

These districts have the power to issue general obligation bonds, as well as revenue bonds, and to impose property taxes annually at a rate not to exceed 75 cents per \$100 valuation of all taxable property in the district. Hospital districts with a population of 75,000 or less may also choose to levy a sales and use tax, if authorized at the creation election. The Health and Safety Code authorizes hospital districts to exercise the power of eminent domain to acquire property if necessary.

Hospital districts may be dissolved upon petition requesting an election on the question of whether to dissolve the district and dispose of its assets and obligations. If a majority of the voters in the election favor dissolution, the board shall find that the district is dissolved and dispose of the district's assets according to the statute.

Article IX contains other sections relating to hospital districts, including Section 9A, authorizing the legislature to determine the health care services a hospital district is required to provide, the requirements a resident must meet to qualify for services, and any other relevant provisions necessary to regulate the provision of health care to residents. Section 9B sets forth requirements specific to hospital districts in counties with a population of 75,000 or less. Sections 5, 7, 8, and 9 set forth provisions for particular counties and regions relating to the creation of the district, the maximum rate of taxes, and the issuance of bonds. Section 13 relates to the responsibility of establishing mental health, mental retardation, and public health services.

Chapters 281 (Hospital Districts in Counties of at Least 190,000), 282 (Hospital Districts in Counties of 75,000 or Less), 283 (Optional Hospital District Law of 1957), 284 (Special Provisions Relating to Hospital District Bonds), and 285 (Special Provisions Relating to Hospital Districts), Health and Safety Code, set forth special provisions relating to hospital districts in counties of certain populations and relating to hospital district bonds. Title 3 (Health) of the Special District Local Laws Code establishes certain county and city hospital districts and sets forth provisions specific to those districts.

Chapters 262 (Municipal Hospital Authorities), 263 (County Hospitals and Other health Facilities), 264



(County Hospital Authorities), and 265 (Joint Municipal and County Hospitals), Health and Safety Code, set forth the provisions for the creation of a municipal, county, or joint municipal and county hospital authority. Hospital authorities are created by municipal ordinance or county order of the respective governing body and are governed by an appointed board of directors. Such authorities do not have taxing power; however, they may issue revenue bonds. Such authorities do have the power of eminent domain.

► Health Services Districts

Chapter 287 (Health Services Districts), Health and Safety Code, authorizes the creation of a health services district. A health services district is created by one or more counties and one or more hospital districts by adopting concurrent orders by contract to provide health care services to indigent residents of the district on a sliding-fee scale. A board of directors is appointed by the county judge of the county that creates the district. The number of directors depends on the population of the county.

Health services districts are not authorized to impose an ad valorem tax or issue general obligation bonds; however, such districts are authorized to issue revenue bonds and impose a sales tax. In some counties, the sales and use tax of the health services district is in addition to a county sales and use tax. Revenue from the tax may only be used to provide health services in the county, such as ambulance or emergency services for the elderly and ill rural county residents. The county may also allocate all or part of the revenue to a county hospital authority or hospital district that has

the same boundaries as the county or is participating in the health services district.

A health services district dissolves when the contract between the counties and hospital districts that created the health services district expires or when the counties and hospital districts adopt concurrent orders terminating the contract.

► Mosquito Control Districts

Chapter 344 (Mosquito Control Districts), Health and Safety Code, authorizes the creation of mosquito control districts, which are created for the purpose of eradicating mosquitoes in the area of the district. These districts are created upon petition by at least 200 qualified voters of the county and upon an election to establish the district and levy a tax not to exceed 25 cents on each \$100 of the taxable value of property within the district. The commissioners court in each county in which a mosquito control district is established is required to appoint an advisory commission of five members and a mosquito control engineer who make recommendations to the commissioners court on measures and expenditures that are necessary to eradicate mosquitoes. The statute sets forth provisions for merging districts and provides for dissolution of the district upon petition and election.

► Emergency Services Districts

In the past, emergency services districts and rural fire prevention districts performed similar functions by providing emergency services to district residents. A constitutional amendment was approved in 2003 converting rural fire prevention districts into emergency services districts and repealing the constitutional authority for the creation of rural fire prevention districts as well as the statutory basis for rural fire districts, Chapter 794 (Rural Fire Prevention Districts) of the Health and Safety Code. The constitutional amendment resulted in an increase in taxing authority from three cents to 10 cents per \$100 valuation of taxable property.

The creation of emergency services districts is authorized under Section 48-e, Article III, Texas Constitution. Emergency services districts support and





provide local emergency services, including emergency medical services, emergency ambulance services, rural fire prevention and control services, and any other emergency services authorized by the Texas Legislature. Chapter 775 (Emergency Services Districts), Health and Safety Code, sets forth the requirements for creation and operation of emergency services districts.

The Health and Safety Code provides that these districts are created by filing a petition with the county judge that is signed by 100 qualified voters. After a public hearing is held considering the creation of the district and upon a finding that the district's creation is feasible and promotes public safety, welfare, health, and convenience of persons residing in the district, the commissioners court will grant the petition. After granting the petition, an election is held to confirm the district's creation and to authorize imposition of a tax not to exceed 10 cents on each \$100 of valuation of the property situated in the district. An emergency services district has the power to impose a sales and use tax and an ad valorem tax. An emergency services district is authorized to issue bonds and notes to perform any of its powers if the commissioners court approves their issuance.

The commissioners court appoints a five-member board of directors with two-year terms. However, if the population of the district is greater than three million and if the district is located in more than one county, the five-member board is elected. Chapter 775 sets forth provisions for merging districts, removing or transferring certain territories within and around districts, and expanding districts. Emergency services districts cannot overlap. An emergency services district is dissolved upon petition, hearing, and election to confirm the dissolution.

Chapter 344 (Fire Control, Prevention, and Emergency Medical Services Districts), Local Government Code, sets forth provisions authorizing a fire control, prevention, and emergency medical services district to be created inside the boundaries of an emergency services district. The municipality that proposes the creation of a fire control, prevention, and emergency medical services district must request consent for its creation from the governing body of the emergency services district, provided that these services are not already offered in the municipality and that the plan does not propose emergency services that were not

provided by a rural fire prevention district or emergency services district within the municipality. Creation of the district and imposition of a sales and use tax for financing the operation of the district must be approved by a majority of the qualified voters of the proposed district at an election held for that purpose.

An emergency services district is authorized to create the office of fire marshal if the county in which the district is located does not already have one. The fire marshal investigates and determines the causes of fires and inspects property for fire hazards. The Health and Safety Code sets forth criminal penalties for persons refusing to cooperate with the fire marshal while conducting investigations or for persons failing to comply with orders issued by the fire marshal. The statute also defines hazardous material and provides that the district may provide services for handling hazardous materials.

Chapter 776 (Emergency Services Districts in Counties of 125,000 or Less), Health and Safety Code, sets forth the provisions for the creation of emergency services districts in counties of 125,000 or less; however, it is becoming more common to rely on Chapter 775 because it authorizes greater flexibility. Chapter 772 (Local Administration of Emergency Communications), Health and Safety Code, sets forth provisions for the creation, operation, and powers of an emergency communications district, establishing a 9-1-1 service as the primary emergency telephone number. This chapter authorizes the imposition of a 9-1-1 emergency service fee to be collected by a service supplier or provider of local exchange access lines (i.e., the phone company) and the issuance of bonds. The chapter sets forth various other provisions for counties of certain populations.

► Jail Districts

Section 48-f, Article III, Texas Constitution, authorizes the legislature to create jail districts that are authorized to issue bonds and to levy an ad valorem tax upon voter approval. Jail districts are created by a county or by two or more counties by contract to finance and effect the construction, acquisition, or improvement of a jail facility to serve the district. Subchapter G (Jail District), Chapter 351 (County Jails and Law Enforcement), Local Government Code, sets forth the provisions relating to

the creation and dissolution of jail districts. Jail districts are created upon petition by at least 10 percent of the registered voters in the county and after a hearing and confirmation election to approve the district's creation. At the election to confirm the district's creation, the board may include a proposition to approve the issuance of bonds and the levy of a property tax, including the maximum amount or rate to be imposed. Temporary directors are appointed by the commissioners courts of all counties in the proposed district to serve staggered two-year terms.

The district is authorized to acquire land for the site of the jail facility by gift, grant, purchase, or condemnation. The exercise of the power of eminent domain requires the board to determine, after notice and hearing, that it is necessary. The district is authorized to enter into construction contracts to construct or improve a jail facility over which the board has control. Upon final inspection of the facility, the board is required to conduct a hearing to determine whether the jail facility is complete, and if the board determines that the work is complete, the board is required to pass a resolution conveying the facility to the county in which the facility is located. The receiving county becomes the owner of the facility and is responsible for the operation, maintenance, and administration of the jail facility, relieving the district of its responsibilities except to pay the district's remaining indebtedness. Upon completion of all construction, acquisition, and improvement of the jail facility, conveyance to the receiving county, and final repayment of all indebtedness, the district may be dissolved by resolution adopted by the board or by a vote of a majority of the commissioners court or registered voters.

► **Crime Control and Prevention Districts**

In 1997, the legislature enacted the Crime Control and Prevention District Act, in Chapter 363, Local Government Code, to authorize municipalities and certain counties to create crime control and prevention districts. A district may be created and a sales and use tax may be imposed for financing the operation of the district upon approval by a majority of the qualified voters of the proposed district voting at an election. Chapter 363 sets forth the rate of the tax, the use of the revenue, and the allocation of the costs for creation of

the district between the county and any municipalities involved.

A crime control and prevention district finances the cost of certain programs, including police and law enforcement-related programs, such as crime stoppers or telephone lines, a radio dispatch center, and a drug and chemical disposal center, among others; community-related crime prevention strategies, such as block watch programs, senior citizen safety programs, and school-police programs; specific treatment and prevention programs, including drug and alcohol awareness and family violence centers; and court and prosecution services, such as arbitration and mediation centers and automated court management and reporting systems.

The governing body of the county or municipality creating the crime control and prevention district is required to appoint a seven-member board of directors who serve staggered two-year terms. An officer of the county or municipality that created the district or a head of a department within the district applies to the board for funding of certain proposed programs. The board is authorized to hold a referendum on the question of whether to continue or dissolve the district upon its own motion, by petition of 10 or more registered voters, or by resolution of the governing body of the county or municipality requesting such action. The district will automatically be dissolved if on the fifth anniversary of the district the board has not held a continuation or dissolution referendum.

Special Purpose Districts

AGRICULTURAL DEVELOPMENT

In 2001, the legislature found that agriculture is a critical element in Texas' economic, cultural, and historical development and that in order to increase economic opportunities, the state must provide incentives to promote the development of agricultural facilities. Chapter 60 (Texas Agricultural Development Districts), Agriculture Code, authorizes the creation of agricultural development districts to accomplish the purposes of

Sections 52 and 52-a, Article III, Texas Constitution, and Section 59, Article XVI, Texas Constitution.

► **Agricultural Development Districts**

Agricultural development districts are created on petition of at least 10 residents of a proposed district, five of whom own real property in the proposed district, submitted to the commissioners court of a county in which an agricultural facility of the proposed district is to be located. A district may consist of parcels of land that are not contiguous and are located in one or more counties; however, no part of a proposed district may be located within an incorporated municipality unless the governing body of the municipality consents in writing.

Within 30 days after the receipt of the petition, the commissioners court is required to call a public hearing at which the petition will be considered. The commissioners court by order will grant the petition creating the district upon finding that the creation of the district and the proposed development is feasible and necessary and would serve the public purpose of economic development. The commissioners court is required to appoint five persons to serve as temporary directors until an election can be held confirming the creation of the district and the initial permanent directors. If a majority of the votes cast in the election favor the creation of the district, the temporary board shall order the district to be created in its minutes.

Agricultural development districts are given the powers and duties that are necessary or desirable to carry out a power or duty expressly or implicitly granted to the district, including being authorized to perform any acts necessary to carry out the purpose of the district. Agricultural districts are authorized to merge with other districts and implement more than one project. The statute authorizes agricultural districts to encourage economic development by taking certain actions and by promoting and encouraging agricultural development. The district may encourage the transportation and distribution of the district's products through the development and operation of transportation structures and may cooperate and contract with any navigation district in an area of mutual interest. Agricultural districts may exercise the power of eminent domain for the purpose of acquiring a facility.

The statute authorizes agricultural development districts to impose certain charges and issue any type of bond for any district purpose. These districts are also authorized to impose an assessment on real property or on an agricultural product produced on real property for a district expense or to finance a project or service, or for any other purpose authorized in the statute. The board must approve a petition requesting an assessment for a specific purpose and hold a hearing on the advisability of the assessment before a district is authorized to impose one. Chapter 60 sets forth the regulations and procedures further relating to assessments.

► **Noxious Weed Control Districts**

Noxious weeds are plants that pose a threat to agriculture and are harmful to the proper use of soil and other natural resources. For this reason, the legislature determined that reclamation of land from noxious weeds is a public right and duty in the interest of conservation and development of the natural resources of the state. Chapter 78 (Noxious Weed Control Districts), Agriculture Code, authorizes the creation of noxious weed control districts. Landowners may petition the commissioners court for the creation of such a district as authorized under Section 59, Article XVI, Texas Constitution. The petition must contain the signatures of 50 individuals or a majority of the persons who hold title to land located in the proposed district, who are 18 years of age, and who reside in a county which is located in the district. After receiving the petition, the commissioners court is required to hold a hearing to determine whether the proposed district will provide a public benefit to a substantial portion of the land within the district and, therefore, whether to grant the petition. Upon granting the petition, the commissioners court must order an election to be held



to determine whether the district should be created. The commissioners court will issue an order declaring the creation of the district in each county in which the district is located if a majority of the votes cast in each county favor its creation.

The commissioners court that orders the creation of the district is required to appoint five persons to serve as the first board of directors of the district. The board is authorized to determine which noxious weeds are subject to control and what methods of control will be used, such as spraying, cutting, burning, or tilling. The board may also prescribe specific areas in which control measures are to be used and a time frame during which the measures will be used. The board is required to provide written notice to each person who holds title to or possesses land within the district of the control measures in effect on the person's land and any information necessary to enable the person to carry out the measures. Upon inspection of a person's land located in the district, the board may determine whether a person is complying with the control measures, and if that person is not in compliance, the board is required to order compliance within a certain period. The board is permitted to sue in the district court of a county for a mandatory injunction if the person continues to fail to comply with an order. The board of directors is authorized to impose an annual assessment on land within the district, not to exceed six cents per acre.

A noxious weed control district may be dissolved upon petition by voters residing in the district and upon an election in which a majority of the votes cast favor the dissolution of the district. The board is authorized to continue to impose annual assessments after dissolution if there are outstanding claims against the district.

► Wind Erosion Districts

Chapter 202 (Wind Erosion Districts), Agriculture Code, authorizes the creation of wind erosion control districts, stating that the purpose of these districts is to conserve the soil by preventing the unnecessary erosion caused by wind and reclaiming land that has been depreciated or denuded of soil by wind. Chapter 202 provides that the creation of such a district is authorized by Section 59, Article XVI, Texas Constitution. It also provides that such a district is a state agency and may



exercise rights, privileges, and functions granted under the Texas Constitution.

These districts are required to be coextensive with the boundaries of a county and to carry the name of that county. Upon submission of a petition signed by at least 50 qualified property tax paying voters in the county to the commissioners court, an election may be conducted by the county on the creation of the district. If a majority of votes are cast for the proposition, the county judge is required to issue an order declaring the creation of the district.

The commissioners court acts as the governing body of the district, with the county judge serving as chairman. The district is authorized to prevent damage to land, highways, and public roads due to the unnecessary movement of sand, dust, and soil and to make improvements and maintain facilities to stop or prevent wind erosion of soil or land. The district may sue or be sued and has the authority to borrow money.

The commissioners court may transfer an amount not to exceed 20 percent of automobile registration fees to the district. The district may use those funds on soil erosion work. On approval of the voters of the county, the commissioners court may also transfer all or part of the county road and bridge fund to the district. The district is prohibited from imposing an ad valorem tax; however, the commissioners court, acting as the governing body of the district, may make an assessment on land after a hearing in which the governing body determines the necessity of an assessment to pay for soil conservation work. The governing body may not, however, make an assessment on land claimed as a homestead, but may take a lien securing the assessment similar to a lien to secure the cost of improvements on a homestead.

Special Purpose Districts

TRANSPORTATION

Section 52, Article III, Texas Constitution, authorizes counties, cities, and political subdivisions of the state to issue bonds and levy taxes for certain purposes. One of those purposes is to construct, maintain, and operate paved roads. In conjunction with the Texas Department of Transportation and the Texas Transportation Commission, counties may create road districts and road utility districts for the purposes of levying taxes and issuing bonds to provide funding for the construction and maintenance of the roads in the proposed district. In addition to Section 52, Article III, Texas Constitution, the creation of navigation districts is also authorized under Section 59, Article XVI, Texas Constitution. These districts are authorized to issue bonds and levy taxes for improving waterways and allowing for the navigation of such waterways.

► Road Districts

The commissioners court of a county may establish one or more road districts in the county as provided by Section 52, Article III, Texas Constitution, for the purpose of constructing, maintaining, and operating macadamized, graveled, or paved roads and turnpikes. However, prior to issuance of an order creating the district, the commissioners court is required to hold a hearing on the matter. The county judge and county commissioners act as ex officio directors of a road district.



Chapter 257 (Road Districts), Transportation Code, sets forth provisions relating to the creation of road districts and measures required to exclude or add real property to the district. It also authorizes a road district to purchase real property or a road owned by a private person. Road districts are authorized to issue bonds and impose ad valorem taxes to pay the interest on those bonds and provide a sinking fund for the redemption of the bonds.

Chapter 1471 (Bonds for County Roads), Government Code, provides specific authority for counties to issue bonds for county roads. That chapter sets forth the procedures for the election on the issuance of bonds and the imposition of property taxes for a road district. It also authorizes the commissioners court to invest money in a sinking fund for the redemption and payment of any bonds. Subchapter C (Refinancing Road District bonds Through Assessments) of Chapter 1471, Government Code, authorizes the refinancing of road district bonds through assessments. Subchapter D (Compensation Bonds) of that chapter sets forth provisions relating to the approval and issuance of compensation bonds.

► Road Utility Districts

Road utility districts are created for the purpose of constructing, acquiring, improving, and providing financing for a road facility. Chapter 441 (Road Utility Districts), Transportation Code, sets forth the provisions relating to road utility districts. That chapter defines “road facility” as a road constructed, acquired, or improved by the district, or property, an easement, or works related to construction of a road, which is constructed, acquired, or improved by the district as necessary or appropriate for or in aid of the improvement of certain waterways to prevent overflow or provide drainage.

Road utility districts are temporary and are created upon a petition signed by the property owners of all real property in the district. The petition is submitted to the Texas Transportation Commission, which will call and hold a hearing on the petition and preliminary plan. If the Texas Transportation Commission finds that the district will benefit the real property in the district and that the road facility is feasible, practicable and necessary, it will grant the petition and appoint five persons to serve

as temporary directors. The temporary directors will then organize a confirmation election for approval of the creation of the district, the temporary directors, and the issuance of bonds. The district is authorized to issue bonds and impose ad valorem taxes to provide for the payment of principal and interest on the bonds.

After the district has completed each construction, acquisition, and improvement of a road facility provided in the approved plan and all bonds and other indebtedness are paid in full, the district is required to convey the road facility to a municipality, a county, or the Texas Department of Transportation. Once those conditions are met, the Texas Transportation Commission will approve a petition for dissolution from the district after which the district ceases to exist as a governmental entity.

► Navigation Districts

Navigation districts generally provide for the construction and improvement of waterways in Texas for the purpose of navigation. The creation of navigation districts is authorized in two different articles in the Texas Constitution to serve different purposes. Section 52, Article III, Texas Constitution, authorizes counties, cities, and other political corporations or subdivisions to issue bonds and levy taxes for the purposes of improving rivers, bays, creeks, streams, and canals to prevent overflow, to provide irrigation, and to permit navigation. Section 59, Article XVI, Texas Constitution, authorizes the creation of conservation and reclamation districts for the purpose of conserving and developing natural resources, including the improvement, preservation, and conservation of inland and coastal water for navigation and controlling storm water and floodwater of rivers and streams in aid of navigation. This section authorizes

conservation and reclamation districts to issue bonds and levy taxes for those purposes. Generally, however, navigation districts are structured, governed, and financed in the same manner.

Chapters 60 through 63, Water Code, set forth provisions relating to navigation districts. Chapter 61 (Article III, Section 52, Navigation Districts) authorizes the creation of districts to operate under Section 52, Article III, Texas Constitution. Chapter 62 (Article XVI, Section 59, Navigation Districts) authorizes the creation of navigation districts under Section 59, Article XVI, Texas Constitution. Chapter 60 (Navigation Districts--General Provisions) sets forth provisions relating to both types of districts. Chapter 63 (Self-Liquidating Navigation Districts) applies to Article XVI, Section 59, Navigation Districts that have bonds that were approved but never issued. Self-liquidating districts are self-liquidating in character and may become self-supporting through the implementation of tolls, rents, fees, assessments, or other charges other than taxation to pay for construction costs.

Generally, navigation districts are created upon petition submitted to the commissioners court of a county, signed by 25 of the resident property taxpayers in the proposed district. The commissioners court then sets a date for a hearing to hear testimony from affected persons and to determine whether the proposed improvements are feasible and practicable and would be a public benefit and utility. If the commissioners court approves the creation of the district, the commissioners court is required to hold an election to vote on the proposition. For the creation of a district authorized under Section 52, Article III, Texas Constitution, a two-thirds vote is necessary to carry a proposition submitted at an election. However, for the creation of a district authorized under Section 59, Article XVI, Texas Constitution, only a majority vote is necessary. After a district is created, the commissioners court appoints three members to a navigation and canal commission.

Navigation districts have the authority to issue bonds and levy taxes that are deposited into a sinking fund for the reimbursement of the bonds. These districts are also authorized to exercise the power of eminent domain. The Water Code sets forth certain provisions regarding the annexation of adjacent territory, the authority to operate port facilities, the conversion of districts, and cooperation with the United States.



Special Purpose Districts CONCLUSION

Currently, there is no centralized database that provides information regarding special purpose districts in Texas, nor is there a centralized association or organization that oversees or facilitates the operations of special purpose districts. However, the Office of the Comptroller of Public Accounts reports information relating to the taxing authority of special purpose districts. The Texas Municipal League and the Texas Association of Counties have also collected and reported a substantial amount of information relating to special purpose districts.

Special purpose districts have many advantages. The services provided by special purpose districts can be tailored to the needs of the citizens and are specific to the land within the district. Therefore, such districts can be extremely flexible. Because special purpose districts are small and governed on a local level, the board members governing the districts are more accessible and can be more responsive to the needs of the citizens within the district's area. Generally, these districts are independent and autonomous and do not have management and regulation beyond the local board of directors after creation. Furthermore, these districts do not need state funding because the districts have the authority to raise money to pay for the projects or services for which they are created.

There are some disadvantages to special purpose districts as well. While providing and regulating services on a local level may be more efficient, competition may be created from overlapping jurisdictions and services. Cities and counties may provide some of the services and functions that special purpose districts are intended to provide. Such competition can generate conflict. In addition, conflict may arise when discussing regional planning efforts because local boards of directors and governing bodies may have trouble communicating, coordinating, or concurring in such efforts, which may actually hinder planning efforts. The large number of special purpose districts and the narrow functions they offer limit the availability of information regarding the

various districts, which could decrease accountability and transparency. In some states, certain special purpose districts that provide similar functions have formed their own associations or nonprofit organizations, such as the Illinois Association of Park Districts and the Michigan Association of Conservation Districts. In other states, such as California, Colorado, and Oregon, statewide associations have been organized to provide better communication, research, education, and administrative support to all special services districts within the state.

There are approximately 3,300 special purpose districts in Texas. In general, most citizens know comparatively little about the jurisdiction, structure, functions, and governance of special purpose districts, thus making them the invisible governments of Texas.

— by *Laura Langham, Corey Roy,*
and Austin Valentine, SRC

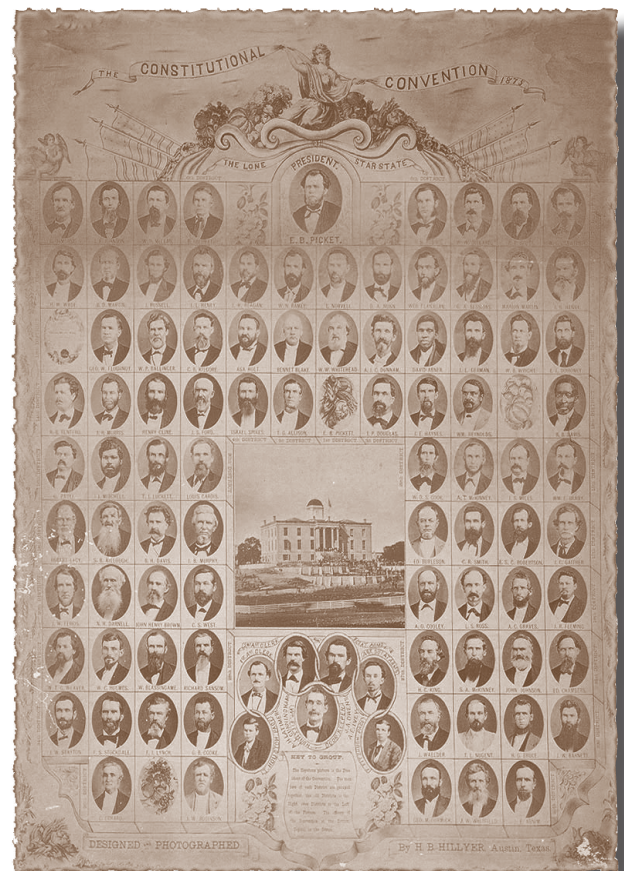


Table 1
General Powers and Authority of Districts Relating to Water and Wastewater

District Type	Constitutional Authority ¹	Statutes ²	Creating Entity	Purpose and Function										Eminent Domain	O&M Tax	Revenue Bonds	Tax Bond Authority	Other
				Supply Raw Untreated Water	Supply Treated Water	Supply Waste-water (Sewer) Service ³	Drainage	Flood Control	Street Lighting	Road Powers	Irrigation	Navigation	Recreation	Hydro-electric	Security			
GMA & GCD	XVI, 59	Ch. 35 & 36	TWDB & TCEQ	X	X	X	X	X								X	X	A
WCID	XVI, 59	Ch. 51	CC or TCEQ	X	X	X	X	X	X		X	X	X		X	X	X	
WCID	III, 52	Ch. 51	CC or TCEQ	X		X	X	X	X		X	X	X		X	X	X	
FWSD	XVI, 59	Ch. 53	CC	X	X	X			X	X ⁴			X		X	X	X	
MUD	XVI, 59	Ch. 54	TCEQ	X	X	X	X	X	X	X	X	X	X		X	X	X	
WID	XVI, 59	Ch. 55	CC or TCEQ	X	X	X	X	X	X		X		X		X	X	X	
WID	III, 52	Ch. 55	CC or TCEQ			X	X	X	X		X		X		X	X	X	
DD	XVI, 59 & III, 52	Ch. 56	CC			X	X	X	X				X		X	X	X	
LID	XVI, 59	Ch. 57	CC		X	X	X	X	X				X		X	X	X	
ID	XVI, 59 & III, 52	Ch. 58	CC or TCEQ	X			X		X		X		X		X	X	X	
RD	XVI, 59	Ch. 59	TCEQ	X	X	X	X	X	X		X	X	X		X	X	X	
ND	III, 52	Ch. 60 & 61	CC			X						X			X	X	X	B
ND	XVI, 59	Ch. 60 & 62	CC	X	X	X	X	X			X	X			X	X	X	B
SLND	XVI, 59	Ch. 63	CC			X	X	X				X			X	X	X	B
SUD	XVI, 59	Ch. 65	TCEQ	X	X	X	X	X	X		X		X		X	X		
SCD	XVI, 59	Ch. 66	TCEQ			X	X	X	X				X		X	X	X	
MMD	XVI, 59 & III, 52	Ch. 375, LGC	TCEQ	X	X	X	X	X	X	X	X	X	X		X	X	X	C

NOTES:

- GMA = Groundwater Management Area
 GCD = Groundwater Conservation District
 WCID = Water Control and Improvement District
 FWSD = Fresh Water Supply District
 MUD = Municipal Utility District
 WID = Water Improvement District
 DD = Drainage District
 LID = Levee Improvement District
 ID = Irrigation District
 RD = Regional District
- ND = Navigation District
 SLND = Self-Liquidating Navigation District
 SUD = Special Utility District
 SCD = Stormwater Control District
 MMD = Municipal Management District
 O&M Tax = Operation and Maintenance Tax
 CC = Commissioners Court
 TCEQ = Texas Commission on Environmental Quality
 TWDB = Texas Water Development Board
- 1 Constitutional Authority refers to provisions in the Texas Constitution.
 2 All statutes in this table refer to chapters in the Texas Water Code, except for MMD, which refers to a chapter in the Local Government Code (LGC).
 3 Wastewater (sewer) Service includes "disposal systems," as defined by Section 30.021, Texas Water Code, which include sewer systems and treatment facilities.
 4 Road powers of FWSDs are limited to those districts located in the Dallas/Fort Worth metropolitan area.
- A In 2002, TWDB designated 16 GMAs based on groundwater reservoirs or aquifers and existing GCDs to regulate groundwater spacing and production. Only one GMA does not include any GCDs.
 B These districts services include port operation and regulation. The description of these districts is included in the transportation section of this document.
 C The description of MMDs is included in the economic and community development section of this document.



Table 2
General Powers and Authority of Districts Relating to Economic and Community Development

District Type	Constitutional Authority ¹	Statutes ²	Creating Entity	Purposes and Functions	Hearing (H) or Election (E)	Eminent Domain	G/O Bonds	Rev. Bonds	Ref. Bonds	Prop. Tax	S&U Tax	Hotel Tax	Assessment
A&E		Ch. 309	Muni	To develop a public and private collaboration that plays a vital role in the cultural life and development of the community in the district. Sec. 309.001.									
SFD		Ch. 325	CC	To finance and effect the construction, acquisition, or operation of a sports facility to serve the county. Sec. 325.002.		X		X					
LD		Ch. 326	CC	To establish, equip, and maintain one or more public libraries for the dissemination of general information relating to the arts, sciences, and literature. Sec. 326.002.	E						X		
SCVD		Ch. 334 & 355	CC or Muni	To plan, acquire, establish, develop, construct, or renovate one or more venue projects in the district, subject to voter approval. Sec. 335.021.	E								
MULD		Ch. 336	CC or Muni	To establish, equip, support, operate, and maintain one or more public libraries for the dissemination of educational programs and general information relating to the arts, sciences, literature, and other subject areas of interest to the public. Sec. 336.003.						X ⁴	X		
PID	III, 52; III, 52-a; & XVI, 59	Ch. 372	CC or Muni	To undertake an improvement project that confers a special benefit on a definable part of a municipality or county, including but not limited to landscaping; constructing or improving sidewalks, streets, or parking facilities; constructing or improving water and wastewater facilities; installing art; and constructing or improving libraries. Sec. 372.003.	H		X	X	X	X	X ⁵	X ⁵	X
HPD		Ch. 373A	Muni	To promote the ability of municipalities to increase homeownership, provide affordable housing, and prevent the involuntary loss of homesteads by existing low-income and moderate-income homeowners living in disadvantaged neighborhoods; to protect a municipality's interest in improving economic and social conditions within disadvantaged communities by enhancing the viability of homeownership among low-income and moderate-income residents in areas experiencing economic pressures; and to provide municipalities with a means to expand and protect the homestead interests of low-income and moderate-income families. Sec. 373A.001.									
MMD	XVI, 59 & III, 52	Ch. 375	TOEQ	To promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the commercial areas of municipalities and metropolitan areas of this state. Sec. 375.001.	H		X	X	X	X	X ⁶		X
MDD	III, 52-a	Ch. 377	Muni	To plan, acquire, establish, develop, construct, or renovate one or more development projects, including but not limited to a convention center facility or related improvement, beneficial to the district. Sec. 377.021.	E			X	X		X		
CDD	III, 52; 52-a; & XVI, 59	Ch. 383	CC	To develop and diversify the economy of the state by providing incentives for the location and development of projects in certain counties to attract visitors and tourists. Sec. 383.002.	H	X		X	X		X	X	
CAD		Ch. 387	CC	To construct, maintain, or improve roads or highways; to provide law enforcement and detention services; to maintain or improve libraries, museums, parks, or other recreational facilities; to provide services that benefit the public health or welfare, including providing firefighting and fire prevention services; and to promote economic development and tourism. Sec. 387.003.	E						X		

NOTES:

- A&E = Arts and Entertainment District
SFD = Sports Facility District
LD = Library District
SCVD = Sports and Community Venue District
MULD = Multijurisdictional Library District
PID = Public Improvement District
HPD = Homestead Preservation District and Reinvestment Zone
MMD = Municipal Management District
MDD = Municipal Development District
CDD = County Development District
CAD = County Assistance District
G/O Bonds = General Obligation Bonds
Rev. Bonds = Revenue Bonds
Ref. Bonds = Refunding Bonds
Prop. Tax = Property Tax
S&U Tax = Sales and Use Tax
Hotel Tax = Hotel Occupancy Tax
CC = County Commissioners Court
Muni = Governing body of a municipality
TOEQ = Texas Commission on Environmental Quality
- 1 Constitutional authority refers to provisions in the Texas Constitution. Some districts may not be explicitly created under constitutional authority.
- 2 All statutes in this table refer to chapters in the Local Government Code.
- 3 A&Es only apply to municipalities with a population of more than one million.
- 4 See May 12, 2008, attorney general opinion stating that the Texas Supreme Court has not ruled on whether express constitutional authority is necessary prior to allowing an MULD to impose an ad valorem tax.
- 5 These taxes only apply to counties with a certain population and location. See Section 372.1011, Local Government Code.
- 6 This tax only applies to defense adjustment management authorities created by municipalities for the purpose of fostering economic opportunity, job generation, and capital investment. See Subchapter O (Defense Adjustment Management Authority), Chapter 375 (Municipal Management Districts in General), Local Government Code.
- 7 CDDs only apply to counties with a population of 400,000 or less.

* MMDs are also included in Table 1.

Table 3
General Powers and Authority of Districts Relating to Health and Safety

District Type	Constitutional Authority ¹	Statutes ²	Creating Entity	Purpose and Function	Hearing (H) and/or Election (E)	Eminent Domain	G/O Bonds	Rev. Bonds	Prop. Tax	S&U Tax
HD	IX, 5, 7-9B, 13	Ch. 281-286	CC	To create a countywide hospital district and provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district. Sec. 281.002.	H & E	X	X	X	X	X ³
HSD	IX, 5, 7-9B, 13	Ch. 287	CCs or HDs ⁴	To provide health care services to indigent residents of the district; to manage the funds contributed to the district by each county or hospital district that contracts with the district; and to plan and coordinate with public and private health care providers and entities for the long-term provision of health care services to residents of the district. Sec. 287.023.				X		X
MCD		Ch. 344	CC	To eradicate mosquitoes in an area. Sec. 344.001.	E				X	
ESD	III, 48-e	Ch. 775 & 776	CC	To provide emergency medical services, emergency ambulance services, rural fire prevention and control services, or other emergency services authorized by the legislature. Art. III, Sec. 48-e.	H & E		X		X	X
JD	III, 48-f	Ch. 351, LGC	CC	To provide safe and suitable jails for the county. Sec. 351.001, LGC.	H & E	X			X	
CCPD		Ch. 363, LGC	CC or Muni	To finance the costs of a crime control and crime prevention program, which may include police and law enforcement-related programs, community-related crime prevention strategies, specific treatment and prevention programs, and court and prosecution services. Sec. 363.151, LGC.	E					X

Table 4
General Powers and Authority of Districts Relating to Agriculture

District Type	Constitutional Authority	Statutes ¹	Creating Entity	Purpose and Function	Hearing (H) and/or Election (E)	Eminent Domain	G/O Bonds	Rev. Bonds	Assessments	Other Funding
ADD	III, 52; III, 52-a; & XVI, 59	Ch. 60	CC	To conserve and develop the natural resources of this state, including agricultural resources. Sec. 60.006.	H	X	X	X	X	
NWCD	XVI, 59	Ch. 78	CC	To reclaim land from noxious weeds in the interest of conservation and development of the natural resources of this state. Sec. 78.002.	H & E				X	
WED	XVI, 59	Ch. 202	CC	To conserve the soil by preventing the unnecessary erosion caused by wind and reclaiming land that has been depreciated or denuded of soil by wind. Sec. 202.002.	E				X	<ul style="list-style-type: none"> • Automobile registration fees • County road and bridge fund

Table 5
General Powers and Authority of Districts Relating to Transportation

District Type	Constitutional Authority	Statutes ¹	Creating Entity	Purpose and Function	Hearing (H) and/or Election (E)	Eminent Domain	G/O Bonds	Rev. Bonds	Prop. Tax	Other Funding
RdD	III, 52	Ch. 257	CC	To construct, maintain, and operate macadamized, graveled, or paved roads and turnpikes, or aid in those activities. Sec. 257.101.	H & E		X	X	X	<ul style="list-style-type: none"> • Assessments
RUD	XVI, 59	Ch. 441	TTC	To construct, acquire, improve, and provide financing for a road facility, which is a road, property, easement, or works related to construction of a road for or in aid of the improvement of certain waterways to prevent overflow or provide drainage. Secs. 441.001 and 441.011.	H & E				X	<ul style="list-style-type: none"> • Maintenance tax

Notes:

HD = Hospital District
HSD = Health Services District
MCD = Mosquito Control District
ESD = Emergency Services District
JD = Jail District
CCPD = Crime Control and Prevention District

G/O Bonds = General Obligation Bonds
Rev. = Revenue Bonds
Prop. Tax = Property Tax
S&U Tax = Sales and Use Tax
CC = Commissioners Court
Muni = Governing body of a municipality

- 1 Constitutional Authority refers to provisions in the Texas Constitution.
- 2 All statutes in this table refer to chapters in the Health and Safety Code, except for JDs and CCPDs, which refer to chapters in the Local Government Code (LGC).
- 3 Hospital Districts (HDs) with a population of 75,000 or less may choose to levy a sales and use tax, upon voter approval.
- 4 One or more counties or one or more hospital districts may adopt concurrent orders by contract to create a health services district.

Table 6
Approximate Number of Districts by Type and Status

Districts Relating to Water and Wastewater	Number of Districts by Status ¹			
	Active	Inactive	Unknown	Dissolved
GMA	16			
GCD	96	1		21
WCID	180	54		501
FWSD	59	21		92
MUD	762	324		468
WID	16	1		40
DD	43	5		58
LID	32	16	1	78
ID	25	1		3
RD	1	1		1
ND	24	2		9
SUD	50	14	1	2
SCD	0	1		
MMD	16	34		4
Other	53	35		54
Total	1373	510	2	1331

Districts Relating to Health and Safety	Number of Active Districts ²
HD	145
HSD	10
MCD	14
ESD	252
JD	0
CCPD	59
Total	480

Districts Relating to Agriculture	Number of Active Districts ³
ADD	0
NWCD	0
WED	0
Total	0

Districts Relating to Economic and Community Development	Number of Active Districts ²
A&E	0
SFD	0
LD	31
SCVD	0
PID	27
HPD	1
MDD	12
CDD	7
CAD	1
Other	17
Total	96

Districts Relating to Transportation	Number of Active Districts ⁴
RdD	21
RUD	8
Total	29

Districts Relating to Education	Number of Active Districts ⁵
ISD	1227
CColl	50
Total	1277

Notes:

District Types:
A&E = Arts and Entertainment District
ADD = Agricultural Development District
CAD = County Assistance District
CColl = Community or Junior College District
CCPD = Crime Control and Prevention District
CDD = County Development District
DD = Drainage District
ESD = Emergency Services District
FWSD = Fresh Water Supply District
GCD = Groundwater Conservation District
GMA = Groundwater Management Area
HD = Hospital District
HPD = Homestead Preservation District and Reinvestment Zone
HSD = Health Services District
ID = Irrigation District
ISD = Independent School District
JD = Jail District
LD = Library District
LID = Levee Improvement District

MCD = Mosquito Control District
MDD = Municipal Development District
MJLD = Multijurisdictional Library District
MMD = Municipal Management District
MUD = Municipal Utility District
ND = Navigation District
NWCD = Noxious Weed Control District
PID = Public Improvement District
RD = Regional District
RdD = Road District
RUD = Road Utility District
SCD = Stormwater Control District
SCVD = Sports and Community Venue District
SFD = Sports Facility District
SLND = Self-Liquidating Navigation District
SUD = Special Utility District
WCID = Water Control and Improvement District
WED = Wind Erosion District
WID = Water Improvement District

Sources:

- 1 Texas Commission on Environmental Quality District County Report requested August 13, 2008.
- 2 2006 Annual Property Tax Report and Texas Sales and Use Tax Rates (July 2008), Texas Comptroller of Public Accounts; Special District Local Laws Code; and the Texas Mosquito Control Association.
- 3 Texas Department of Agriculture.
- 4 2006 Annual Property Tax Report, Texas Comptroller of Public Accounts.
- 5 Texas Education Agency and Texas Association of Community Colleges.

SCHOOL DISTRICT TIMELINE

Events relating to the creation and organization of public school districts in Texas.

- 1854: The Common School Law created the first state public school system in Texas and provided the proper funding.
- 1869: The Texas Constitution of 1869 provided the framework for a centralized public school system, vesting power in a state superintendent and State Board of Education (SBOE).
- 1875: The independent school district (ISD) was created, which authorized any incorporated city to provide education for all children of scholastic age.
- 1883: An amendment was added to the Texas Constitution that created the delineation of school districts.
- 1900: There were 526 ISDs.
- 1911: A rural high school law was enacted, which established county boards of education and permitted the creation of rural high schools and the consolidation of common school districts, to provide greater equality between common and rural school districts and independent or urban school districts.
- 1915: The Texas Legislature increased the amount of funding provided to rural high school districts, leading to a rapid increase in the number of rural high school districts.
- 1928: The county boards of education were authorized to detach territory from one school district and attach it to another.
- 1931: The Texas Legislature authorized county boards of education to create school districts from parts of other districts.
- 1935-1936: SBOE commissioned a study of school district consolidation. There were 6,953 school districts, including 5,938 common school districts that enrolled 65 students on average. ISDs had an average enrollment of 800 students. SBOE was authorized to also create school districts at military reservations.
- 1983: After several previous attempts to formulate a consolidation plan, the Texas Legislature made substantive revisions to the statutes relating to the creation, consolidation, and abolition of school districts. The legislature was able to develop consolidation procedures, while also providing election requirements, indebtedness procedures, boundary change procedures, creation procedures, dormant district requirements, dissolution procedures, and conversion procedures for school districts.
- 1993: SBOE was granted the authority to create districts for the education of students in special situations whose educational needs were not adequately met by regular school districts.
- 1995: The Texas Legislature increased local control and provided opportunities for local ownership in the education process by creating charter schools and home-rule education.
- 1996: SBOE authorized the creation of the state's first 20 charter schools.
- 1997: An additional 100 charter schools were established for at-risk students.
- 2001: The Texas Legislature capped the number of open-enrollment charter schools at 215.


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